

ISLAMIC INTESTATE SUCCESSION IN KENYA: IMPACT ON THE WOMEN'S RIGHTS

Submitted in partial fulfilment of the requirements of the Bachelor of Laws Degree, Strathmore
University Law School

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Word Count: 14,089

TABLE OF CONTENTS

ACKNOWLEDGEMENT	iv
DECLARATION.....	v
ABSTRACT.....	vi
LIST OF ABBREVIATIONS	vii
LIST OF CASES.....	viii
LIST OF LEGAL INSTRUMENTS	ix
CHAPTER ONE: INTRODUCTION.....	10
1.1 Background.....	10
1.2 Problem Statement	13
1.3 Scope of Study	13
1.4 Research Objectives.....	14
1.5 Research Questions.....	14
1.6 Hypothesis.....	14
1.7 Literature Review.....	15
1.8 Significance of Study	20
1.9 Theoretical Framework.....	21
1.10 Research Methodology	23
1.11 Chapter Breakdown.....	24
CHAPTER TWO: KENYA’S ISLAMIC INTTESTATE SUCCESSION LEGAL FRAMEWORK	26
2.1 Introduction.....	26
2.2 Islamic Intestate Succession Framework	26
2.3 Review of Court Jurisprudence on Islamic Intestate Succession Law in Kenya.....	29
2.3.1 Court Jurisprudence Promoting Discriminatory Application of Islamic Intestate Succession Laws Against Women.....	30
2.3.2 CKC & another (Suing through their mother and next friend JWN) v ANC (2019)...	31
2.3.3 Religious Discrimination Against Women by Courts Post CKC & another v ANC (2019) Decision.....	32
2.4 Conclusion	33
CHAPTER THREE: ARTICLE 24(4) OF THE CONSTITUTION OF KENYA (2010).....	34
3.1 Introduction.....	34

3.2 Overview of Article 24 (4) of the Constitution of Kenya (2010)	34
3.3 Equality and Non-Discrimination	35
3.3.1 Contradictory Constitutional Provisions: Introduction	35
3.3.2 Practical Situations of Discrimination against Women in the Application of Islamic Intestate Succession Laws	36
3.3.3 Effects of Article 24(4) of the Constitution of Kenya (2010)	37
3.4 Human Rights Obligations	38
3.4.1 The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	38
3.5 Conclusion	39
CHAPTER FOUR: BEST PRACTICES IN SINGAPORE’S APPLICATION OF ISLAMIC INTESTATE SUCCESSION LAWS	40
4.1 Introduction	40
4.2 Intestate Succession Legal Framework in Singapore	40
4.3 Best Practices in the Application of Islamic Intestate Succession Laws	42
4.3.1 Broad interpretation	42
4.3.2 Singapore’s Legal System	42
4.4 Comparing the Islamic Intestate Succession Legal Framework of Kenya and Singapore ..	43
4.4.1 Similarities	43
4.4.2 Differences	44
4.4.3 Adoption of Singapore’s Best Practices in Kenya’s Islamic Legal Framework	46
4.5 Conclusion	47
CHAPTER FIVE: FINDINGS, RECOMMENDATIONS AND CONCLUSIONS	48
5.1 Introduction	48
5.2 Key Findings	48
5.2.1 Legal Conflict Between Islamic Law and Constitutional Principles	48
5.2.2 The Role of Article 24(4) in the Limitation of Rights	48
5.2.3 Judicial Interpretations and Legal Precedents	48
5.2.4 Best Practices from Singapore	49
5.2.5 The Need for Legal and Institutional Reforms	49
5.3 Recommendations	49
5.3.1 Legal Reforms to Promote Gender Equality	49
5.3.2 Judicial and Institutional Reforms	49

5.3.3 Adoption of Alternative Inheritance Mechanisms	50
5.3.4 Public Awareness and Legal Literacy	50
5.3.5 Comparative Legal Studies and Reforms	50
5.4 Conclusion	51
BIBLIOGRAPHY.....	53



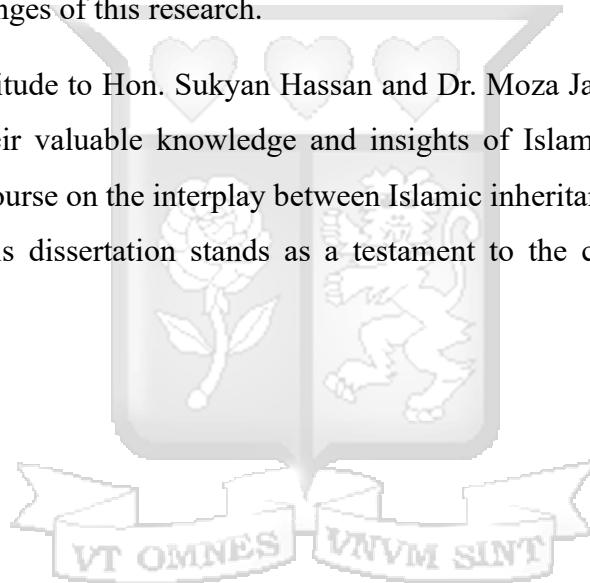
ACKNOWLEDGEMENT

Firstly, I acknowledge and give thanks to God Almighty, whose boundless grace, wisdom, and guidance have been the cornerstone of my academic journey. Without His divine blessings, the completion of this dissertation would not have been possible.

I would also like to express my heartfelt gratitude to my supervisor, Dr. Jennifer Gitahi, whose insightful guidance, constant support, and unwavering commitment have been instrumental throughout this research journey. My sincere thanks also go to Conrad Akunzirwe for his encouragement and for providing an enriching academic environment.

I am deeply appreciative of my family and friends for their steadfast belief in me and their moral support during the challenges of this research.

Finally, I extend my gratitude to Hon. Sukyan Hassan and Dr. Moza Jadeed who sacrificed their time and contributed their valuable knowledge and insights of Islamic inheritance law. Thus, helping to shape the discourse on the interplay between Islamic inheritance law and constitutional principles in Kenya. This dissertation stands as a testament to the collaborative spirit of the academic community.



DECLARATION

I, KAMAU ALTON WAITHAKA, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed: AW.K.....

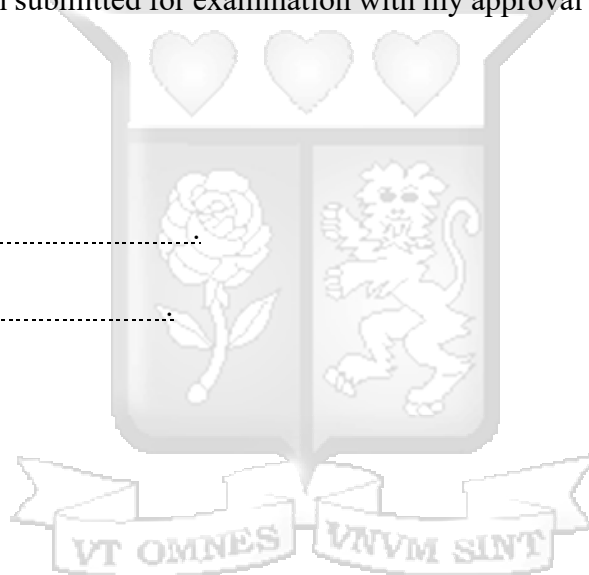
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Date: 8 April 2025.....



ABSTRACT

This study investigates the conflict between Kenya's Islamic intestate succession law and its constitutional commitment to equality and non-discrimination. It examines how the application of Islamic intestate succession rules under Article 24 (4) of the Constitution of Kenya clash with the democratic and human rights ideals embedded in the Kenyan Constitution. Set against a backdrop of historical legal reforms and political pressures, the research seeks to establish that the current application of Islamic law in intestate succession matters perpetuates gender and religious discrimination against women. The research will also showcase how Islamic intestate succession law undermines the broader constitutional mandate for fairness.

Drawing on a theoretical framework rooted in the feminist legal theory, the study employs a doctrinal research methodology to analyse statutory instruments, judicial decisions, and draw lessons (most notably) from Singapore's innovative approach to balancing religious and civil legal norms. Ultimately, the research aims to demonstrate that targeted legal and institutional reforms, such as the adopting alternative inheritance mechanisms and more precise judicial guidelines, are essential to harmonize Islamic intestate succession practices with Kenya's constitutional principles, thereby fostering a more equitable system for all heirs.

Keywords: Islamic intestate succession law, Kenya, gender equality, women, feminist legal theory, constitutional law, Singapore, human rights.



LIST OF ABBREVIATIONS

1. CEDAW: The Convention on the Elimination of All Forms of Discrimination against Women
2. MUIS: Majlis Ugama Islam Singapura



LIST OF CASES

1. National cases (in order of citation)

- a) *Centre for Rights Education and Awareness (CREAW) & eight others v Attorney General & another* (2012) eKLR
- b) *Ripples International v Attorney General & Another* (2022) eKLR
- c) *CKC & another (Suing through their mother and next friend JWN) v ANC* (2019) eKLR
- d) *NUFR v MSC* (2015) eKLR
- e) *Fatuma Anab Mohamed Haji & 5 others v Asha Abdullahi & 3 others* (2018) eKLR
- f) *Mohamed Juma v Fatuma Rehan Juma & 6 others* (2017) eKLR
- g) *In re Estate of Ramadhan Hassan (Deceased)* (2014) eKLR
- h) *Re Estate of Mwangi Suleiman Kahiu* (2019) eKLR
- i) *In the Matter of the Estate of Ishmael Juma Chelanga* (2002) KEHC 1177 (KLR)
- j) *In re Estate of Mohamed Kinango Kitonyo (Deceased)* (2019) eKLR
- k) *Ramadhan Mustafa v Zulfa Ngasia Juma* (2019) eKLR
- l) *In re Estate of IOI* (2019) KEKC 35 (KLR)
- m) *Aisha Brek v Aisha Mohamed Nzawa & another* (2020) eKLR
- n) *In re Estate of Jumaa Abdalla Munyu alias Jumaa Abdalla (Deceased)* (2023) KEKC 21 (KLR) (8 November 2023)
- o) *Fatuma Anab Mohamed Haji & 5 others v Asha Abdullahi & 3 others* (2018) Eklr

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- a) *Sarla Mudgal, President Kalyani v. Union of India* (1995), Supreme Court of India
- b) *Kumpulan Fatwa 3* (1998) Muslim Religious Affairs Division Jawatankuasa Fatwa of Singapore
- c) *Mohamed Ismail bin Ibrahim and others vs Mohammad Taha bin Ibrahim* (2004) The High Court of Singapore
- d) *Shafeeg Bin Salim Talib and Another v. Fatimah Bte Abud Bin Talib and Others* (2009) The Supreme Court of Singapore
- e) *Zainudin Bin Mohamed v. Sharifah Alphia Binte Syed Ali* (Appeal Case No. 19/1997) Appeal Board of Singapore

LIST OF LEGAL INSTRUMENTS

Constitution

1. *Constitution of Kenya* (2010).
2. *Constitution of Singapore* (1965).

Legislation

Kenya

1. *Law of Succession Act* (Cap. 160 of 1981).
2. *Miscellaneous Amendment Act* (Act No.21 of 1990).

Singapore

1. *Administration of Muslim Law Act* (1966).

Repealed Statutes (Kenyan)

1. *Mohammedan Marriage, Divorce and Succession Act* (Cap. 156 of 1962).

International Instruments

1. *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, Vol. 1259.
2. United Nations Convention on the Rights of the Child, 20 November 1989, No. 27531.
3. UN Committee on the Elimination of Discrimination Against Women (1994) CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations.

CHAPTER ONE: INTRODUCTION

1.1 Background

The Sunni Islamic jurisprudence is based on four major schools of thought, namely: Shafi'i, Maliki, Hanbali and Hanafi.¹ This research will focus on the Shafism school of thought as Shafi'ism is historically the most influential Islamic school in Kenya.² The Shafi'i Islamic jurisprudence adheres strictly to textual sources from the Quran and Hadith with regard to inheritance laws.³ Additionally, the application of the Shafi'i principles in inheritance rights should be influenced by political and social factors, such as cultural norms, legal interpretations and societal attitudes.⁴

In 2010, Kenya promulgated a new Constitution which states that any law that is contrary to the Constitution is null and void to the extent of the inconsistency.⁵ The principles of non-discrimination and equality in the Constitution advocate for unbiasedness and equality towards everyone before the law.⁶ However, Islamic law has been considered discriminatory to the female gender in instances of intestate succession.⁷ Hence, the inconsistency clause contained in the Constitution⁸ renders such Islamic law practices null and void. This is because Islamic law practices would be going against the Constitution's values and principles, such as equality and non-discrimination.⁹

The uncertainty as to the application of Islamic intestate succession laws that discriminate against women to date gives rise to the analysis of Islamic law based on constitutional values and principles. Firstly, the Law of Succession Act commenced on 1 July 1981 as the main succession

¹ Ajmal M, Sadiq R and Rafay A, 'Fragmentation of Islamic financial products – an exploratory study of Islamic schools of thought' *Abasyn Journal of Social Sciences Special Issue: Towards Financial Inclusion*, 2016, 48 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2790458 on 16 January 2025.

² REINVENT Programme, *Study to examine the influence of contemporary Islamic ideologies in Kenya: Mandera, Garissa, Marsabit and Isiolo counties*, June 2021, 27.

³ Asman A, 'Comparative analysis of the istinbath methods of the Shafi'i and Hanafi schools regarding the role of the wali mujbir in marriage law' 9 *Al-Ahkam: Jurnal Ilmu Syari'ah dan Hukum* 1, 2024, 38

⁴ Ulwi N, Masnun M, and Zuhdi M, 'Inheritance rights of children born out of wedlock: analysis from the perspective of Shafi'i school of jurisprudence and the civil law code (children of zina) with an educational approach' 9 *Jurnal Ilmiah Profesi Pendidikan* 2, 2024, 1263.

⁵ Article 2(4), *Constitution of Kenya* (2010).

⁶ Article 27, *Constitution of Kenya* (2010).

⁷ Mujuzi J, 'The Islamic law of marriage and inheritance in Kenya' 65 *Journal of African Law* 3, 2021, 388.

⁸ Article 2(5), *Constitution of Kenya* (2010).

⁹ Article 10(2), *Constitution of Kenya* (2010).

law in Kenya, with universal application over all testamentary and intestate succession disputes where the deceased died after the Act's commencement date.¹⁰ Additionally, the Law of Succession Act applies in the administration of the estates of persons who had died before the commencement of the Act.¹¹

The enactment of the Law of Succession Act resulted in the repealing of previous succession statutes such as the Mohammedan Marriage, Divorce and Succession Act which recognised, in particular, Islamic intestate succession law.¹² The Mohammedan Marriage, Divorce and Succession Act was limited to applying Islamic intestate succession disputes where the deceased was a Muslim through birth or marriage.¹³ By enacting the Law of Succession Act, the legislators sought to cure the numerous inheritance conflicts and administration problems that were created by the different succession law systems at independence.¹⁴ The Law of Succession Act was the guiding statute on all matters of succession until the 1990 *Miscellaneous Amendment Act* which sanctioned the use of Islamic law in succession disputes and exempted Muslims from the Law of Succession Act.¹⁵ The amendment rendered the universal application of the Law of Succession Act inoperable and inapplicable with regard to Islamic succession law except in instances where the Law of Succession Act does not contradict Islamic intestate succession law.¹⁶

The Constitution sets out the values and principles of equality and non-discrimination¹⁷ which Section 2(3) of the Law of Succession Act is inconsistent with and would be, therefore, null and void.¹⁸ Furthermore, Article 27 of the Constitution has been interpreted simultaneously with the national values and principles of governance.¹⁹ The outcome of this interpretation by the Court is

¹⁰ Section 2(1), *Law of Succession Act* (Cap. 160 of 1981).

¹¹ Section 2(2), *Law of Succession Act* (Cap. 160 of 1981).

¹² Kameri-Mbote W, 'The law of succession in Kenya: gender perspectives in property management and control' International Environmental Law Research Centre, 1995, 13.

¹³ Section 4, *Mohammedan Marriage, Divorce and Succession Act* (Cap. 156 of 1962)

¹⁴ Kimiriny D, 'Kenya's laws of succession and the bill of rights of the Kenya constitution (2010): a study in legal reform' Unpublished, Strathmore University, Nairobi, 2017, 10.

¹⁵ *Miscellaneous Amendment Act* (Act No.21 of 1990).

¹⁶ Kameri-Mbote W, 'The law of succession in Kenya: gender perspectives in property management and control' International Environmental Law Research Centre, 1995, 12. Refer also to Section 2(3), *Law of Succession Act* (Cap 160. of 1981).

¹⁷ Article 10 (2), *Constitution of Kenya* (2010).

¹⁸ Article 2 (4), *Constitution of Kenya* (2010).

¹⁹ Article 10, *Constitution of Kenya* (2010).

that any laws that discriminate against women are to be considered unconstitutional.²⁰ However, the Constitution allows for the limitation of the freedom of equality in matters of Islamic succession law.²¹ Therefore, the practice of Islamic succession law is not unconstitutional, as Islamic intestate succession law practice is provided for under Article 24(4) of the Constitution of Kenya.

Article 24(4) of the Constitution of Kenya provides that the limitation of the right to equality under Article 27 of the Constitution is allowed in the application of Islamic intestate succession laws in the Kadhi Courts to those who profess the Muslim faith.²² This provision acknowledges the Islamic religious practices by providing for the application of Islamic law in resolving disputes related to Islamic intestate succession matters, thereby upholding their freedom of religion and belief.²³ Article 24(4) seeks to address the conflict between the right to equality provisions and the Islamic practices on intestate succession, therefore, preventing the infringement of religious freedoms and ensuring that the right to equality does not undermine Islamic intestate succession practices.²⁴

Despite the Constitution advocating for Islamic succession law practice, the Islamic intestate succession laws discriminate against women who are considered inferior to men. Intestate succession in Islamic law is based on patriarchy.²⁵ This is prevalent in the Islamic Holy Book in Chapter 4, verse 11 and verse 12 which states that the son of a deceased is to inherit double of what the daughters of the deceased would inherit from his estate. This goes the same to the siblings of the deceased.²⁶ Additionally, the wife is to get a quarter of the deceased husband's property if they were barren.²⁷ Conversely, if they had a child, the wife was entitled to only an eighth of the estate.²⁸ With that in mind, the husband of a deceased wife is eligible to half of her property if they

²⁰ Centre for Rights Education and Awareness (CREAW) & eight others v Attorney General & another [2012] eKLR.

²¹ Article 24 (4), *Constitution of Kenya* (2010).

²² Article 24 (4), *Constitution of Kenya* (2010).

²³ Article 32, *Constitution of Kenya* (2010).

²⁴ Jadeed M, Waris A and Musembi C, 'The application of Islamic inheritance law in independent and contemporary Kenya: a Muslim's right to equality and freedom from discrimination' 8 *Africa Nazarene University Law Journal* 1, 2020, 31.

²⁵ Mansoori M, 'Reviewed work: women's rights and Islamic family law: perspectives on reform by Lynn Welchman' 48 *Islamic Studies* 2, 2009, 282.

²⁶ Bello A, 'Al mirath: Islamic law of inheritance' Department of Islamic Studies College of Education, 2023, 10.

²⁷ Hoque K, Uddin M, and Islam M, 'Inheritance rights of women in Islamic law: an assessment' 2, *International Journal of Islamic Thoughts* 2, 2013, 46

²⁸ Hoque K, Uddin M, and Islam M, 'Inheritance rights of women in Islamic law', 46.

had no child, and a quarter of the estate if they had a child.²⁹ Patriarchal practices such as the aforementioned which are applied in Islamic intestate succession laws tend to contravene the constitutional values and principles of equality and non-discrimination of the Constitution of Kenya.

1.2 Problem Statement

The evolution of succession law has led to the adoption of non-discrimination and gender equality reforms and policies in some aspects of the Kenyan succession law. However, the adoption of discriminatory intestate succession practices in Islamic law still prevails, even though they continue to exhibit discriminatory tendencies that disadvantage women in intestate succession matters.³⁰ Furthermore, the Constitution of Kenya 2010 permits for the limitation of the right to equality in matters of Islamic succession laws, which mainly affects women. As such, the conflict between Islamic law and constitutional principles such as non-discrimination and equality, persists in intestate succession.³¹ However, regardless of the privilege conferred to the Muslims to apply Islamic intestate succession law by Article 24(4), some aspects of these Islamic intestate succession laws are intrinsically unconstitutional as they are unjust and undermine the human dignity of the Muslim woman. Therefore, the Constitution of Kenya should be amended to guarantee fair and effective justice and to uphold human dignity for the Muslim and non-Muslim woman.

This study therefore aims to analyse the contradiction between the Constitution's support of the application of Islamic law in intestate succession vis-à-vis the constitutional principles of non-discrimination and equality in intestate succession law in Kenya.

1.3 Scope of Study

This study examines the discrimination against Muslim and non-Muslim women in the application of Islamic intestate succession law in Kenya. The study analyses the legal framework governing Islamic intestate succession and its interaction with Kenyan constitutional provisions of equality and non-discrimination with regard to women. Additionally, the study evaluates legal

²⁹ Husein M, 'Islamic law of succession in relation to women' 9 *Ilorin Journal of Religious Studies* 1, 2019, 41.

³⁰ Bishin BG and Cherif FM, 'Women, property rights, and Islam', 49 *Comparative Politics* 4, 2017, 510.

³¹ *CKC & another (Suing through their mother and next friend JWN) v ANC* (2019) eKLR.

recommendations available to the affected women by assessing Singapore's approach to Islamic intestate succession laws, highlighting Singapore's best practices that could be adopted by Kenya. By examining Singapore's legal mechanisms, including state oversight and alternative dispute resolution, the study determines their potential applicability in Kenya.

1.4 Research Objectives

1. To analyse the legal framework of Islamic intestate succession in Kenya.
2. To examine Article 24 (4) of the 2010 Constitution of Kenya in relation to Islamic intestate succession laws using the constitutional values and principles of equality and non-discrimination.
3. To assess best practices in Singapore in the application of Islamic Law in intestate succession and how these can be adopted by Kenya.
4. To propose recommendations for the enhancement of the current application of Islamic Law in intestate succession in Kenya.

1.5 Research Questions

1. What is the legal framework of Islamic intestate succession in Kenya?
2. Does Article 24(4) of the Constitution in relation to Islamic intestate succession laws align with the constitutional values of equality and non-discrimination?
3. What are the best practices in Singapore in the application of Islamic Law in intestate succession that can be adopted in Kenya?
4. What recommendations can be proposed for the enhancement of the current application of Islamic law in intestate succession in Kenya?

1.6 Hypothesis

The strict and narrow application of Islamic intestate succession laws in Kenya has led to the consistent discrimination directed against Muslim and non-Muslim women. Court jurisprudence has brought about a lot of bias in the way they assess intestate succession with regard to Islamic laws. The courts in Kenya have insisted on the strict and narrow interpretation of Islamic intestate succession laws in the division of intestate estates without taking into consideration parties that receive a lesser share from the distribution such as Muslim and non-Muslim women. This

application of Islamic intestate succession laws has been provided for by Article 24(4) of the Constitution of Kenya allowing the limitation of the right of equality to the women heirs to a Muslim's deceased estate.

Laws should be interpreted in a manner that harmonises with other related laws and legal principles, avoiding absurd results caused by strict and narrow interpretation. Thus, when it comes to the interpretation of Islamic intestate succession laws, the strict and narrow interpretation of Islamic intestate succession law should be re-examined. The justification for the re-examination is to establish alternative Islamic distribution instruments such as gifts and vows as supplementary distribution mechanisms of Islamic intestate estates which would result in the reduction of discrimination towards women in intestate distribution.

1.7 Literature Review

The literature on Islamic intestate succession law reveals a dynamic debate centred on the tension between Shafi'i intestate succession jurisprudence and constitutional values of equality and non-discrimination. The debate is particularly within the Kenyan legal context. Scholars have extensively examined the Quranic and Hadith foundations of intestate succession rules. The scholars highlight how these intestate succession rules are either defended as reflective of distinct familial responsibilities or critiqued as perpetuating gender bias and discrimination against the woman.³²

While there is no adequate scholarly material published about Article 24(4) of the Constitution of Kenya the following scholars contribute to the narrative of the discrimination against women by Islamic intestate succession law in Kenya's jurisprudence. Mujuzi Jamil argues that the application of Islamic intestate succession law is not discriminatory as Article 24(4) of the Constitution provides for the limitation of the right to equality in the application of Islamic intestate succession law.³³ He analyses cases such as *Mohamed Juma v Fatuma Rehan Juma* (2017)eKLR under the Kadhi courts which held that for one to inherit from a deceased Muslim's estate, (s)he has to fall

³² Sungay M, 'Do women face discrimination under Islamic law of succession? An examination of the male-preferential 2:1 rule of inheritance' *Law Democracy and Development* 2023, 454-455---
<https://www.scielo.org.za/pdf/ldd/v27/17.pdf> on 17 February 2025.

³³ Mujuzi J, 'The Islamic law of marriage and inheritance in Kenya', 1.

within the following categories of heirs: Qur'anic sharers, residuary heirs and distant kindred.³⁴ He also adds that Article 24(4) of the Constitution of Kenya in addition to Section 2(4) of the Law of Succession Act provide for the use of Islamic intestate succession laws.³⁵ In his view, the Islamic intestate succession laws are very detailed and the failure to apply it by courts is discriminatory on the ground of religion but the law's application does not bring discrimination to the woman.³⁶

In the analysis of the discriminatory practices of Islamic intestate laws against women, this literature review will analyse scholarly work from other jurisdictions. Firstly, Hoque Kazi, Uddin Muhammad and Islam Mohammad assert that there is no discrimination against women in the application of Islamic intestate succession laws. They however state that the women's right to inherit equally is a contentious issue under Islamic law.³⁷ Islamic inheritance rules allocate different shares to males and females, sparking concerns about gender bias.³⁸

That notwithstanding, scholars such as Polok Beata, Abdulmohsen Dareen, and Dussin Mariana have defended the existing system, arguing that it promotes fairness by considering differing roles and responsibilities within families.³⁹ With this in mind, Abduroaf Muneer continues to justify the larger shares for men due to their financial obligations.⁴⁰ However, there has been an evolution of spousal rights and duties such as financial responsibilities that has become more visible in day to day societal activities.⁴¹ Hence, the Islamic intestate distribution of property would disadvantage the woman as the complementary nature of spousal duties today would require her to also contribute to the family maintenance.

Bello Abdulmajeed also argues that there is no discrimination against women in Islamic law of Succession. Abdulmajeed states that according to Islam, women are free from economic responsibilities and are to be maintained by their male relatives if they do not have any independent

³⁴ Mujuzi J, 'The Islamic law of marriage and inheritance in Kenya' 11.

³⁵ Mujuzi J, 'The Islamic law of marriage and inheritance in Kenya', 18-19.

³⁶ Mujuzi J, 'The Islamic law of marriage and inheritance in Kenya', 21.

³⁷ Hoque K, Uddin M and Islam M, 'Inheritance rights of women in Islamic law : an assessment', 48.

³⁸ Zulfikar and Windani S, 'Gender equality in inheritance distribution reviewed from the perspective of Islamic inheritance law' 5 *Journal of Gender and Social Inclusion in Muslim Societies* 1, 2024, 15.

³⁹ Polok B, Abdulmohsen D, and Dussin M, 'Cultural relativism and women's rights in Islamic personal law in Saudi Arabia', 19 *Manchester Journal of Transnational Islamic Law & Practice* 3, 2023,65.

⁴⁰ Abduroaf M, 'An analysis of the rationale behind the distribution of shares in terms of the Islamic law of intestate succession' 53 *De Jure Law Journal* 1, 2020, 120.

⁴¹ Polok B, Abdulmohsen D, and Dussin M, 'Cultural relativism and women's rights in Islamic personal law', 65-66.

resources as they are not legally required to provide for anyone including themselves.⁴² He emphasises that even a wealthy wife is to be provided for by her husband, the sister by her brother, the mother by her son, as any able man is held responsible for his family and other possible dependants.⁴³ Jadeed Moza also affirms this stating that Islamic law is non-discriminatory on the basis of gender as the 2:1 ration is not applicable to maternal siblings (share the same mother but different fathers) who are given identical shares of the estate.⁴⁴ She emphasises that there is substantive equality where the 2:1 ratio is applicable as the extra one given to the man is not his per se as it is to be used to take care of the women in the deceased's family and the man's family, therefore, both the male and female get an equal portion of the estate.⁴⁵ Thus, Shafi'i scholars, such as Abd al Afi Hammudah, use the Islamic law of adequate care to justify the Islamic law of Succession discrimination, stating that the law of adequate care assures the woman's maintenance.⁴⁶

However, scholars such as Goodluck Layefa and Ngozi Ezenagu assert that the application of Islamic intestate law is discriminatory against the women. They state that the Muslim women who are married to a man of a different faith are discriminated against by disinheriting them as they are considered non-Muslim according to chapter 5 verse 5 of the Quran read together with Book 23 Hadith 1 (Book 11 Hadith 3928 USC-MSA web (English)).⁴⁷ For it is assumed that the Muslim women, unlike men who are not disinherited for marrying outside Islam, are easily susceptible to take up the husband's religion, therefore becoming non-Muslims and according to Islam, non-Muslims cannot inherit from Muslims.⁴⁸

Yusup Andi further establishes that despite the enactment of new secular laws that provide legal

⁴² Bello A, 'Islamic law of inheritance: ultimate solution to social inequality against women' 29 *Arab Law Quarterly* 3, 2015, 272.

⁴³ Jamal J, *The Islamic law of personal status*, 3 ed, Brill Publishers, Leiden, 2017, 174.

⁴⁴ Jadeed M, 'The inheritance rights of Muslim women in Kenya: reality or rhetoric?' Unpublished, University of Nairobi, Nairobi, 2020, 120-121.

⁴⁵ Jadeed M, 'The inheritance rights of Muslim women in Kenya: reality or rhetoric?' Unpublished, University of Nairobi, Nairobi, 2020, 107.

⁴⁶ Abd al Afi H, *The family structure in Islam*, reprint ed, American Trust Publications, Indiana, 2008, 269.

⁴⁷ Goodluck L and Ngozi E, 'Inter-faith marriages: engaging Nigerian religious identity in the film northeast' 104 *Pharos Journal of Theology* 2, 2023. 8. Read together with Jawad H and Karakaya A, 'Interfaith marriages in Islam from a woman's perspective: Turkish women's interfaith marriage practices in the United Kingdom' 40 *Journal of Muslim Minority Affairs* 1, 2010, 3.

⁴⁸ Azmi A, Saleh N and Zakaria M, 'Hibah as alternative to resolve inheritance issue among new Muslim converts (Muallaf) in Malaysia: An Analysis' 44 *Islamiyyat* 1, 2022, 83.

protections to women from discrimination as a result of the application of Islamic law, they often face difficulties accessing their rightful inheritance in Islamic intestate succession laws.⁴⁹ For instance, Andi asserts that Islam denies a wife who is not Muslim the right to inherit anything from the husband's estate while Muslim daughters who have married outside the faith are disinherited.⁵⁰ Additionally, the deceased's son's inheritance right in comparison to the daughter's inheritance right is divided to the ratio of 2 to 1 in favour of the son.⁵¹ The female heirs are strongly discriminated against in Islamic succession law with regard to their share in the estate.⁵²

Ahangar Mohd discusses how Islamic states such as Sudan and Egypt have deviated from the contemporary Islamic succession laws completely due to reforms within their laws.⁵³ Sudan being the first country to reform its Islamic Inheritance laws in the Judicial Circular Number 26 of January 1925, granted a wife or husband the right to inherit all assets of the deceased if there were no other living heirs.⁵⁴ This was the same case where there was only one surviving heir and the wife of the deceased where the surviving heir was entitled to the remaining portion of the estate after the wife of the deceased has received her fixed share.⁵⁵ Egypt also issued a Judicial Circular No. 28 of 1925, similar to that of Sudan which allowed the wife to inherit all assets where there are no remaining heirs.⁵⁶ Additionally, Ahangar Mohd emphasises on countries such as Turkey. He states that despite 99 per cent of Turkey's 82.5 million population professing the Islamic faith,⁵⁷ Turkey does not apply Islamic intestate succession laws but enforces a uniform code for all matters of succession which is similar to that of the French and Swiss.⁵⁸

Also, Manooja analyses a Supreme Court case in India which took into consideration the

⁴⁹ HRC session discussing aspects of women's right to inheritance Saudi Gazette, 2 November 2020 <https://saudigazette.com.sa/article/599848> on 28 February 2024.

⁵⁰ Yusup A, 'Controversy of Islamic law on the distribution of inheritance to the heirs of different religions' 14 *Hunafa: Jurnal Studia Islamika* 2, 2017, 386.

⁵¹ Muhammed M, *Inheritance in Islam*, 1 ed, Sadaqatu Tayyibatun Foundation, Minna, 2012, 20.

⁵² International Institute for Environment and Development, *Women's access to land: the legal framework and its implementation*, 1 July 2016, 20.

⁵³ Ahangar M, 'Succession rights of Muslim women in the modern world: an analytical appraisal' 28 *Arab Law Quarterly* 2, 2014, 122.

⁵⁴ Hakim M, 'Ismail mundu on Islamic law of inheritance a content analysis of majmū' al-mīrāth fī ḥukm al-farā'id' 61 *Al-Jāmi'ah: Journal of Islamic Studies* 1, 2023, 62.

⁵⁵ Budhiraja G, 'Inheritance under Shia law: principles and its analysis' 2 *Indian Journal of Integrated Research in Law* 1, 2022, 5.

⁵⁶ Ahangar M, 'Succession rights of Muslim women in the modern world', 123.

⁵⁷ United States Department of State, *Turkey 2021 international religious freedom report*, 2021, 3.

⁵⁸ Ahangar M, 'Succession rights of Muslim women in the modern world', 124.

implementation of a uniform civil code on intestate succession law over the use of different legal systems, on a case-by-case basis, in intestate succession.⁵⁹ The ruling by the Supreme Court of India was to protect the equality of women with regard to matters of succession, giving clear emphasis on Islamic law's discriminatory impact on the rights of the women, therefore, separating inheritance law from religion.⁶⁰ This comes to show that even more progressive states have abandoned the strict Islamic intestate succession laws for secular laws to prevent instances of adverse discrimination against the women in the application of Islamic intestate succession laws.

Furthermore, authors such as Abdullah Muhamad, Awang Abdul and Zakaria Mohamad have analysed how countries that implement the Islamic intestate succession legal framework apply the framework in a more balanced approach in its application.⁶¹ They demonstrated how countries such as Malaysia have implemented Islamic estate planning instruments which align with the goals of Islamic law (*maqasid syariah*) and aim to promote welfare and justice within the community.⁶² For instance, the distribution of an Islamic insurance policy (*hibah takaful*) can provide financial security for the disinherited non-Muslim women, ensuring that they receive benefits upon the father's demise, thus safeguarding their future.⁶³ Additionally, a Will can specify the allocation of a third of the assets as bequests to the non-Muslim wife of the deceased to support her maintenance.⁶⁴ Additionally, a testamentary trust can manage the funds of the children of the deceased and his non-Muslim wife until they reach maturity.⁶⁵

Kamarudin Mohd and Muhamad Nasrul also bring about the concept of property jointly owned by spouses (*harta sepencarian*).⁶⁶ This concept holds that before the estate is distributed according to chapter 4, verses 11 and 12 of the Quran, the widow is entitled to her contributed share, in

⁵⁹ Sarla Mudgal, *President Kalyani v. Union of India* (1995), Supreme Court of India.

⁶⁰ Manooja D, 'Uniform civil code: a suggestion' 42 *Journal of the Indian Law Institute* 2/4, 2008, 455.

⁶¹ Mahmood T, Din N, Mamun A and Ibrahim M, 'Issues and challenges of zakat institutions achieving maqasid syariah in Malaysia' 2 *Azka International Journal of Zakat and Social Science* 1, 2021.

⁶² Mahmood T, Din N, Mamun A and Ibrahim M, 'Issues and challenges of zakat institutions achieving maqasid syariah in Malaysia' 2 *Azka International Journal of Zakat and Social Science* 1, 2021, 126.

⁶³ Salman S, Htay S, 'Nomination and hibah issues in Malaysian takaful (Islamic insurance) industry' *Islamic International University Malaysia*, 2013, 4.

⁶⁴ Tripathi A, 'The concept of 'will' under Muslim law: a study' 4 *International Journal of Law and Legal Jurisprudence Studies* 3, 2018, 73

⁶⁵ Abdullah M, Awang A and Zakaria M, 'Analysis of trust instrument in Islamic estate planning: a study case at amanah raya berhad, Malaysia.' 14 *Journal of Islamic Accounting and Business Research* 8, 2023, 1410.

⁶⁶ Kamarudin M and Muhamad N, 'Islamic estate planning and management: Malaysian experience' 1 *International Journal of Management Applications* 1, 2018, 10.

addition to that which she's entitled to as a Qur'anic sharer, of the jointly owned property as they took part in the asset acquisition.⁶⁷

As observed above, researchers have based their studies on the right to equality and non-discrimination in the application of Islamic intestate succession. Some such as Hoque Kazi, Uddin Muhammad and Islam Mohammad have concluded that there is neither inequality nor discrimination in the application of Islamic intestate succession while others such as Bello Abdulmajeed have posited that there is both equality and non-discrimination. Additionally, some scholars such as Goodluck Layefa have stated that some these Islamic interpretations develop gender discrimination as they limit the female Muslims as to who they can get married to through the threat of disinheritance while allowing the male Muslims to marry outside the faith.

Despite this wealth of scholarship, a critical gap persists in understanding the interplay between Article 24(4) of the Constitution of Kenya, and Islamic succession practices which bring about discrimination against the woman. Furthermore, practices such as Islamic estate planning that bring about a balanced approach to the application of Islamic intestate succession laws are yet to be adopted in Kenya. This leaves a gap that allows women to be discriminated against while applying the Islamic intestate succession laws in Kenya. Therefore, this research will quantify the gender gap by examining the compatibility between Article 24(4) of the Constitution of Kenya and the constitutional principles of equality and discrimination. Additionally, the paper will aim to test whether the adoption of Islamic estate planning adoption in Kenya would have an effect on the gender gap.

1.8 Significance of Study

This research delves into the complexities of Islamic law in Kenyan inheritance disputes, offering valuable insights for various stakeholders. Legal professionals may improve their practice and provide insights for legal reforms, while policymakers may design laws that balance religious and cultural preservation with non-discrimination and gender equality. Additionally, this research empowers advocacy groups to fight for the rights of women in intestate inheritance and contributes to broader discussions about legal systems, culture, and human rights, aiming for an equal legal

⁶⁷ Kamarudin M and Muhamad N, 'Islamic estate planning and management', 10.

landscape in Kenya.

1.9 Theoretical Framework

The theoretical framework for this study is based on the feminist legal theory. This theory, according to Martha Fineman, holds that law is perceived to be gender neutral and objective but in reality, the law is deeply rooted within patriarchal structures.⁶⁸ Fineman establishes that the feminist legal theory investigates how law establishes and regulates gender while also exploring how gender influences legal norms, processes and outcomes.⁶⁹ Proponents of the feminist legal theory such as Linda Berger critique the traditional legal models such as equality, justice and rights, claiming that these models are interpreted and used in a manner that disadvantages women.⁷⁰

Islamic intestate succession law is interpreted in a manner that disadvantages the women with legal aspects such as equality not being considered, for instance, where the intestate laws provide for female heirs to receive half of what their male counterparts get.⁷¹ Furthermore, the Constitution of Kenya allows the practice of Islamic intestate succession law.⁷² This poses challenges to the uniform application of gender equality as stated by Amina Wadud, a proponent of the feminist legal theory, who highlights that Islamic intestate practices create gender disparities, therefore raising concerns about equality rights for women.⁷³ Additionally, Superior court appellate decisions of Islamic intestate succession disputes determined by Kadhi courts expose the patriarchal structure of Islamic intestate succession law established in the feminist legal theory. This is seen with superior court decisions enforcing the 2:1 distribution ratio of the intestate estate

⁶⁸ Fineman M, 'Gender and law: feminist legal theory's role in new legal realism' *Wisconsin Law Review*, 2005, 408-
-- https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2103394# on 31 March 2025.

⁶⁹ Dang M, 'Applying feminist legal principles to achieve gender equality in Vietnam's labor legislation' 10 *Cogent Social Sciences* 1, 2024, 3.

⁷⁰ Berger L, Crawford B and Stanchi K, 'Using feminist theory to advance equal justice under law' 17 *Nevada Law Journal* 539, 2017, 543-544.

⁷¹ Hoque K, Uddin M and Islam M, 'Inheritance rights of women in Islamic law', 48.

⁷² Article 24(4), *Constitution of Kenya* (2010).

⁷³ Embabi D, 'Production of knowledge by translating 'Islamic feminist' works: the case of Amina Wadud's work' Egypt's Presidential Specialised Council for Education and Scientific Research, EPSCES Occasional Papers Number 61, June 2016, 216-----

https://www.academia.edu/60425533/Production_of_knowledge_by_translating_Islamic_feminist_works_The_case_of_Amina_Wadud_s_Work on 31 March 2025.

of the deceased Muslim.⁷⁴ Additionally, Muslim women who have married non-Muslim⁷⁵ and non-Muslim wives have not been taken into consideration in the distribution of the intestate estate⁷⁶, thus, bringing out the discrimination against women in the Islamic intestate succession laws.

Furthermore, while relying on the feminist legal theory, I will seek to expose the legal reasoning based on gendered assumption and biases of the masculine nature of law, in this case, Islamic intestate succession law.⁷⁷ The deconstruction of the masculine character of law will achieve gender equality within legal systems.⁷⁸ In the Kenyan legal system, Article 24(4) of the Constitution establishes this masculinity of law under the guise of protecting religious practices of minority groups. Feminist legal theorists such as Tracy Thomas argue that diverse experiences and needs of women are to be considered when giving a more inclusive and contextual approach of the interpretation of provisions such as Article 24(4) of the Constitution.⁷⁹ The diverse experiences and needs of women establish the intersectionality tenet of the feminist legal theory, showing how social identities such as race and gender produce unique experiences of oppression.⁸⁰ Therefore, by exposing the non-neutrality notion of Article 24(4) of the Constitution, I will reveal the provision's patriarchal structure.⁸¹ Additionally, I will dismantle the harm this provision establishes, on the basis of the theory, thus, paving the way for a more inclusive, just and equitable intestate succession laws on Kenya.⁸²

Moreover, Minh Dang provides that the traditional legal practices are modernised through the feminist legal theory, in this circumstance, Islamic intestate succession law practices, to promote fairness and inclusivity.⁸³ Singaporean courts have taken this progressive approach in applying Islamic intestate succession laws which has led to a more equitable and transparent distribution of

⁷⁴ *re Estate of Mohamed Kinango Kitonyo (Deceased)* (2019) eKLR.

⁷⁵ *Ramadhan Mustafa v Zulfa Ngasia Juma* (2019) eKLR.

⁷⁶ *In the Matter of the Estate of Ishmael Juma Chelanga* (2002) KEHC (1117)KLR.

⁷⁷ Dang M, 'Applying feminist legal principles to achieve gender equality', 3.

⁷⁸ Dang M, 'Applying feminist legal principles to achieve gender equality', 4.

⁷⁹ Thomas T, 'The long history of feminist legal theory' in Brake D, Chamallas M, and Williams V (eds.), Oxford University Press, United States, 2021, 14.

⁸⁰ Dang M, 'Applying feminist legal principles to achieve gender equality', 3.

⁸¹ Fineman M, 'Gender and law: feminist legal theory's role in new legal realism', 408---
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2103394# on 31 March 2025.

⁸² Dang M, 'Applying feminist legal principles to achieve gender equality', 4.

⁸³ Dang M, 'Applying feminist legal principles to achieve gender equality', 7.

the intestate estate of the deceased.⁸⁴ This is despite Singapore having a similar constitutional provision to Article 24(4) of the Constitution of Kenya which bestows the application of Islamic intestate succession law the privilege to limit the right to equality.⁸⁵ The approach taken by the Singaporean courts ensures that the traditional interpretations of the intestate laws evolve with contemporary societal needs. Kenya's Islamic intestate succession legal system could be enhanced by integrating a clear, non-biased Islamic intestate legal framework and adaptive jurisprudence for better legal reasoning and legal reform.⁸⁶ By adopting these approaches, Kenya could foster a more balanced and gender inclusive system, where new interpretations of the Islamic intestate succession laws that promote gender justice and equitable succession outcomes are used by Kadhi courts as proposed by Amina Wadud.⁸⁷

In conclusion, the feminist legal theory advanced by Martha Fineman is relevant to this study as it will expose the inherent patriarchal biases embedded within Islamic intestate succession laws, highlighting how these legal norms disadvantage women through unequal distribution of intestate estate of the deceased. The study will use the theory to critique traditional Islamic intestate succession legal models and provide constitutional provisions that shield women from the Islamic intestate succession discriminatory practices. Also, the author advocates for a progressive reinterpretation and modernization of intestate succession laws, one that aligns with contemporary societal demands for gender equality and justice.

1.10 Research Methodology

This study employs a doctrinal research methodology through the interpretations of chapter 4, verses 11 and 12 of the Quran because the key research problem is rooted in the aforementioned sources. The study will collect data qualitatively through the use of scholarly articles to analyse the research problem in addition to relevant legal content assessment. There will also be referral

⁸⁴ Hooker MB, 'Succession to Muslim estates in Singapore: sources of law and choices of law' 15 *Australian Journal of Asian Law* 2, 2014, 210.

⁸⁵ Article 12 (3), *Constitution of Singapore* (1965).

⁸⁶ Dang M, 'Applying feminist legal principles to achieve gender equality', 9.

⁸⁷ Embabi D, 'Production of knowledge by translating 'Islamic feminist' works: the case of Amina Wadud's work' Egypt's Presidential Specialised Council for Education and Scientific Research, EPSCES Occasional Papers Number 61, June 2016, 216-----

https://www.academia.edu/60425533/Production_of_knowledge_by_translating_Islamic_feminist_works_The_case_of_Amina_Wadud_s_Work on 31 March 2025.

to relevant case law on the discrimination against women brought about by the application of Islamic intestate succession laws. The research will also draw lessons from Singapore which relies on the Shafi'i school for the interpretation of Islamic intestate succession law just like Kenya, however, it provides Islamic alternative distribution mechanisms to supplement the chapter 4 verses 11 and 12 interpretations. These Islamic alternative mechanisms reduce the discrimination against women in the distribution of the intestate estate by providing a more balanced approach in the application of Islamic intestate succession laws.

There will be referral to primary sources including the Constitution of Kenya and acts of parliament such as the Law of Succession Act. Additionally, the study has incorporated interviews of Jadeed Moza, an Islamic Kenyan scholar at the University of Nairobi and Sukyan Hassan, a Deputy Chief Kadhi of Kenya conducted by the author. The justification for this is that the paper seeks to prove that the application of Islamic intestate succession is discriminatory against women and the interviews may reduce bias of the research by giving an Islamic perspective of the intestate succession laws.

1.11 Chapter Breakdown

Chapter 1: Introduction

This chapter introduces the concept of succession law in Kenya while highlighting the application of Islamic law in Kenyan inheritance laws. It provides the research questions and objectives, hypothesis, and justification of the research.

Chapter 2: Kenya's Islamic Intestate Succession Legal Framework

This chapter will analyse the legal basis, such as the Quran, Hadith and interpretations from Islamic scholars, in the governing Islamic intestate succession. It will analyse Islamic succession law in Kenya which is primarily established through the Constitution, the Kadhi's Courts Act, and the Law of Succession Act in addition to the effects of the application of Islamic intestate succession in Kenya.

Chapter 3: Critique of Article 24(4) of the Constitution of Kenya(2010)

This chapter will assess Article 24(4) of the Constitution which limits the right to equality in the

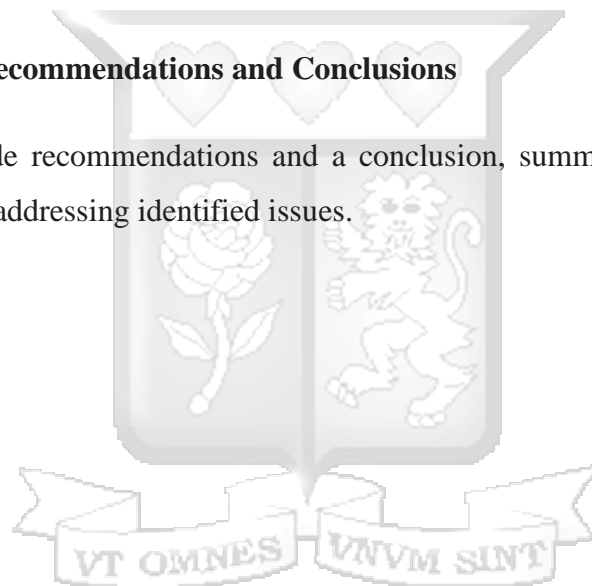
application of Islamic law in inheritance matters. It will analyse Article 24(4) of the Constitution in relation to the constitutional values and principles of equality and non-discrimination examining whether the Islamic intestate succession law's application aligns with Kenya's broader view of women's rights.

Chapter 4: Best Practices in Singapore's Application of Islamic Intestate Succession Law

This chapter will present Singapore's application of Islamic law in intestate succession. The chapter will assess how the best practices from Singapore can be adapted to enhance Kenya's approach to Islamic intestate succession, focusing on potential reforms that could lead to a more equitable system.

Chapter 5: Findings, Recommendations and Conclusions

This chapter will provide recommendations and a conclusion, summarizing key findings and offering suggestions for addressing identified issues.



CHAPTER TWO: KENYA'S ISLAMIC INTESTATE SUCCESSION LEGAL FRAMEWORK

2.1 Introduction

This chapter will mainly examine chapter 4, verses 11 and 12 of the Quran which guides the legal framework of Islamic law governing intestate succession in addition to Book 19, Hadith 2903 and interpretations from scholars of the Shafi'ism School. The chapter will also study the application of Islamic intestate succession law in Kenya with reference to Kadhi court decisions appeals. It will exemplify the Court of Appeal decision of *CKC and Another v ANC* (2019) case that interpreted Islamic law in a manner which has brought balance between the Islamic justice and promoting equality and non-discrimination amongst women.

The review of appeals of Kadhi court decisions is crucial to understand the application of the Islamic legal framework in Kenya with regard to intestate succession. This will aid in comprehending the current position of the Islamic legal framework in Kenya where the constitutional values and principles of equality and discrimination are limited in their enforcement during the application of Islamic intestate succession laws.

2.2 Islamic Intestate Succession Framework

Islamic intestate succession law is characterized by the four Sunni schools of thought, Shafi'i, Maliki, Hanbali and Hanafi, which encompasses multiple interpretations and applications. Each school employs distinct methodologies for interpreting Islamic texts, leading to variations in inheritance rulings, such as the distribution of shares among heirs and the rights of certain relatives.⁸⁸ These different schools of thought allow for flexibility in applying intestate succession rules to different cultural contexts. However, this enables Muslims to adopt favourable interpretations and resort to "fatwa-shopping" (a *fatwa* is a legal opinion or decree handed down by an Islamic religious leader).⁸⁹ In other words, fatwa-shopping is the looking for a favourable *fatwa* since the understanding of Islam is broad as there is a wide range of interpreters.⁹⁰

⁸⁸ *CKC & another (Suing through their mother and next friend JWN) v ANC* (2019) eKLR.

⁸⁹ Merriam Webster Dictionary, 11ed.

⁹⁰ Mujuzi J, 'The Islamic law of marriage and inheritance in Kenya', 397.

According to Sukyan Hassan, Islamic laws, to be specific, chapter 4, verse 19 of the Quran, brought about positive change to the Muslim women in Islamic intestate succession by outlawing the practice of women being inherited as property and having no rights at all.⁹¹ Islamic intestate succession law is derived from chapter 4, verses 11 and 12 of the Quran and Book 19, Hadith 2903 in addition to interpretations of Islamic scholars with application principles designed to ensure a fair and just distribution of a deceased person's intestate estate among his/her heirs.⁹² These principles of Islamic intestate succession law are applied through a strict interpretation in accordance with chapter 24, verses 46-52 of the Quran which provides for the strict obedience of Islamic law.⁹³ The deceased's property under Islamic intestate succession laws is not limited to tangible and real property but also includes any other property that the deceased owned that has monetary value and is lawful (*halal*). This, however, does not include the money given to the widow after the death of the deceased or property the deceased sold in his lifetime.⁹⁴

The Holy Quran elaborates on these shares in various verses with the most relevant being those contained in Chapter 4 of the Quran, verses 11 and 12.⁹⁵ Chapter 4 of the Quran, verses 11 and 12 state that the deceased's son's share is twice that of his daughter; while the husband's share is half of that of his wife's estate in the case of no children and one-fourth if there are children; and a wife receives one-fourth of her deceased husband's estate if there are children, and one-half if there are no children.⁹⁶ This brings about the 2:1 ratio between the male and the female amongst the Quranic sharers.⁹⁷

Furthermore, heirs to the intestate estate are divided into three⁹⁸ (according to the inheritance order provided in chapter 4 verse 11 and 12 of the Quran). These include the Quranic sharers who are the most key set of heirs who take priority. They are the first to be assigned their share of the intestate estate. Also, there are the residuary heirs who are assigned the deceased's estate if there

⁹¹ Interview with Sukyan Hassan, Deputy Chief Kadhi, based on the Quran at the Kadhi Courts, Nairobi on 24 February 2025.

⁹² *NUFR v MSC* (2015) eKLR.

⁹³ Interview with Sukyan Hassan, Deputy Chief Kadhi, based on the Quran at the Kadhi Courts, Nairobi on 24 February 2025.

⁹⁴ Mujuzi J, 'The Islamic law of marriage and inheritance in Kenya', 387.

⁹⁵ Mujuzi J, 'The Islamic law of marriage and inheritance in Kenya', 388.

⁹⁶ *Fatuma Anab Mohamed Haji & 5 others v Asha Abdullahi & 3 others* (2018) eKLR.

⁹⁷ Mostafa Md, 'Rules and practices of women's inheritance rights in Islam: Bangladesh perspective' 3 *International Journal of Islamic Business and Management* 1, 2019,15.

⁹⁸ *Mohamed Juma v Fatuma Rehan Juma & 6 others* (2017) eKLR.

is any remainder from the intestate after the Quranic sharers have been assigned their shares. Finally, there consists of distant kindred who can only inherit intestate in the absence of the heirs mentioned above.

According to the Shafi'i school, distribution of the intestate estate of the deceased is to be in accordance with Chapter 4, verses 11 and 12 of the Quran. Thus, where there is a part of the intestate estate that has remained after the intestate estate distribution, the Shafi'i school holds that the Quranic sharers should not benefit from the residue inheritance (*Al Radd*).⁹⁹ The residue is to be put under the *Bayt al mal* (House of Wealth) which is under the management of the government of the state the deceased was domiciled in, for the benefit of Muslims at large.¹⁰⁰ The house of wealth system is however not applied in Kenya.

Furthermore, daughters of the deceased are disinherited once they marry a non-Muslim man, therefore, removing the daughters' entitlement to the estate of the deceased Muslim as such marriage is prohibited in Islam. This is due to a presumption that the Islamic female would be susceptible to convert to the religion of the non-Muslim husband.¹⁰¹ Moreover, Sukyan Hassan, Deputy Chief Kadhi, stated that the recent court decision (in the footnote) that applied conventional laws in Islamic intestate disputes which entitled non-Muslims to inherit a deceased Muslim's intestate estate¹⁰² violated the right to freedom of religion¹⁰³ and right to non-discrimination¹⁰⁴ of the Islamic heirs. This Court decision has denied the Islamic heirs to practice the Islamic religion strictly as per chapter 24, verse 46-52 of the Quran.¹⁰⁵

In addition, the intestate estate of a deceased Muslim is distributed according to Islamic law, which does not require letters of administration.¹⁰⁶ The legal heirs are first determined before the deceased's estate is identified, and a proper valuation of the estate (assets and liabilities) is conducted to determine the exact shares for each beneficiary according to Islamic law. The Kadhi's

⁹⁹ Omar N and Muda Z, 'Change of *Mazhab* (school of thought): the effects on inheritance in Islamic family law' 7 *International Journal of Academic Research in Business and Social Sciences* 11, 2017, 637.

¹⁰⁰ Omar N and Muda Z, 'Change of *Mazhab* (school of thought)', 637.

¹⁰¹ Goodluck L and Ngozi E, 'Inter-faith marriages', 8.

¹⁰² *CKC & another (Suing through their mother and next friend JWN) v ANC* (2019) eKLR. This is the court decision referred to in the text.

¹⁰³ Article 32, *Constitution of Kenya* (2010).

¹⁰⁴ Article 27, *Constitution of Kenya* (2010).

¹⁰⁵ Interview with Sukyan Hassan, Deputy Chief Kadhi, based on the Quran at the Kadhi Courts, Nairobi on 24 February 2025.

¹⁰⁶ *In re Estate of Ramadhan Hassan (Deceased)* (2014) eKLR.

Court is responsible for overseeing this distribution and ensuring compliance with Islamic principles.¹⁰⁷ Furthermore, the principles of intestate inheritance emphasize justice and fairness, ensuring that the needs of vulnerable family members, such as widows and orphans, are met as the distribution of wealth is seen to promote social harmony and support vulnerable members of society.¹⁰⁸

Finally, Islamic intestate succession allows one to waive their right to inherit the property of the deceased as a beneficiary in part or in full through the doctrine called *takharuj* by accepting payment from the property being inherited or any other properties or without any payment.¹⁰⁹

2.3 Review of Court Jurisprudence on Islamic Intestate Succession Law in Kenya

To best capture the application of Islamic intestate succession practices, the study will analyse past precedence on court jurisprudence of superior courts in Kenya with regard to appeal decisions of Islamic intestate succession. The research examines superior court decisions since the interaction between Islamic intestate succession laws and the superior courts has caused a conflict between statutory and Islamic laws on issues related to Islamic intestate succession law. This has developed constructive criticism that has led to the establishment of a comparative jurisprudence within Kenya's pluralistic system.¹¹⁰ The dissertation focuses on superior court decisions that fully enforced Islamic intestate succession law. It will also focus on the 2019 Court of Appeal case of *CKC & another (Suing through their mother and next friend JWN) v ANC*, which promoted rights to equality and non-discrimination over the Islamic intestate succession laws. Additionally, the paper analyses superior court decisions that continue to prioritise Islamic intestate succession law over the rights to equality and non-discrimination even after the 2019 decision.

¹⁰⁷ Mujuzi J, 'The Islamic law of marriage and inheritance in Kenya', 389.

¹⁰⁸ *CKC & another (Suing through their mother and next friend JWN) v ANC* (2019) eKLR.

¹⁰⁹ *Re Estate of Mwangi Suleiman Kahiu* (2019) eKLR. *Takharuj* is an agreement between the two heirs that is made in an effort to mitigate a dispute between heirs according to Husna A, Taufan M and Fatimawali F, 'Takharuj in the distribution of inheritance and its legal consequences from the compilation of Islamic law' 1 *Proceeding of International Conference on Islamic and Interdisciplinary Studies*, 2022, 257.

¹¹⁰ Hashim A, 'Application of Muslim personal law in Kenyan courts: problems and prospects' 11 *Islamic Africa* 2, 2020, 208.

2.3.1 Court Jurisprudence Promoting Discriminatory Application of Islamic Intestate Succession Laws Against Women

Firstly, the study will focus on the case of *In the Matter of the Estate of Ishmael Juma Chelanga* in the High Court.¹¹¹ The deceased had left a widow with three children and his mother. In the proceedings the mother brought up two other children that she claimed were the deceased heirs who were also entitled to inheritance as beneficiaries of the deceased. The wife opposed this, stating that her children were the only legitimate children of the deceased according to Islamic law proving that the children introduced to the Court as beneficiaries by the mother of the deceased were illegitimate children. One of the two children was a daughter to the deceased and the deceased paid for her school fees as well as her other needs, therefore, dependent on him. Additionally, the deceased took her to the mother's place during the holidays. With all this in contention, the Court ruled in favour of the widow and held that since the deceased professed the Islamic faith, his estate was to be distributed under Islamic law and therefore his daughter was disinherited as she was a Catholic. Thus, she was not entitled to the deceased father's estate. This decision, that is established in Islamic law, brings out the religious discrimination against the deceased's daughter.

Moreover, in *re Estate of Mohamed Kinango Kitonyo (Deceased) at the High Court*,¹¹² the protestors (4 daughters of the deceased) filed an affidavit of protest objecting the valuation of the assets that formed the estate of the deceased. They averred 5,000,000 shillings as college tuition fees was not enough for there was more than 5,000,000 shillings worth of the deceased's assets that had been sold after the distribution. They protested the distribution of the estate in accordance with Islamic law as it was discriminatory on the basis of gender and therefore unconstitutional and recommended a fresh valuation of the estate to be carried out on the estate. In the judgement, the Court referred to articles 27 and 24(4) of the Constitution to hold that the right to equality is not absolute and therefore the Islamic intestate distribution formula is not unconstitutional.

Additionally, in *Ramadhan Mustafa v Zulfa Ngasia Juma* in the High Court,¹¹³ the appellant filed an appeal contesting a Kadhi Court decision that left out the mother of the appellant as well as other heirs to the estate in the distribution of the estate of the deceased father. The appellant claimed that the Kadhi court did not recognise his mother as a dependent of the estate as a divorced wife

¹¹¹ (2002) KEHC 1177 (KLR).

¹¹² (2019) eKLR.

¹¹³ (2019) eKLR.

in accordance with Section 29 of the Law of Succession Act. The Court held that the Kadhi Court did not err in their judgement as the appellant was mixing secular law with Islamic law, for a divorced wife is not entitled to the property of the deceased according to Islamic law. With regard to the non-recognition of other beneficiaries the Court held in favour of the Kadhi Court decision stating that the beneficiaries that were allegedly not recognised had married Christians. Thus, they were disinherited from the deceased's estate because Muslim women who have been married to men of other beliefs cannot inherit from Muslims according to Chapter 5 verse 5 of the Quran. This, decision emphasises the discrimination Muslim women face as divorced wives lose the entitlement to the deceased's estate as compared to divorced women in Kenyan statutory law. Also, Muslim men are still entitled to inherit from the deceased estate despite marrying women of other beliefs.

2.3.2 CKC & another (Suing through their mother and next friend JWN) v ANC (2019)

The case of *CKC & CC (Suing through their mother and next friend JWN) v ANC* in the Court of Appeal takes a different approach as compared to the above cases.¹¹⁴ The brief facts of the case are that the two appellants were appealing the High Court decision which held that the two appellants were not entitled to the inheritance share of their deceased father from the estate of their grandfather. This is because the appellant who was the wife of the deceased was non-Muslim who was not married by the deceased under Islamic law. She contested the application of Islamic intestate succession law was discriminatory against non-Muslim wives as it prohibited her from inheriting from her deceased partner. The Court used the legal principle of strict derogation when interpreting Article 24(4) of the Constitution in conjunction with Article 170 of the Constitution. It emphasised that the limitation to the freedom of equality must meet the strict clauses outlined in Article 24(4) of the Constitution. This emphasised that the derogation must be to the extent that is strictly required, must relate to inheritance and all parties must be Muslims and submit to the Kadhi Court jurisdiction. The conditions stated in the previous sentence are to be met before Islamic law is applied. Through this holding, the Court promoted the right of equality and non-discrimination for women who face systemic religious discrimination, therefore, upholding human dignity and ensuring that all individuals are treated with respect. Therefore, the Court determined that the

¹¹⁴ (2019) eKLR.

appellant's right to non-discrimination was violated as it rejected the application of the discriminatory Islamic intestate succession laws.

2.3.3 Religious Discrimination Against Women by Courts Post CKC & another v ANC (2019) Decision

Despite the CKC & another (Suing through their mother and next friend JWN) v ANC (2019) Court of Appeal decision, the High Court of Kenya in the case of *Aisha Brek v Aisha Mohamed Nzawa & another*¹¹⁵ still maintained that women who have married with the deceased Muslim but had not married under Islamic laws were not legal heirs to the estate and thus the women could not inherit their deceased's intestate estate. The Court held that in addition to the second respondent not being entitled to the deceased's estate, her children were illegitimate as they were born when there was no valid Islamic marriage between the deceased and the second respondent. Thus, the Court held that the Kadhi Court erred in their decision by including the second respondent and her children as heirs to the deceased's estate.

Additionally, in the case of *Habiba Sharu Hirbo v Ibrahim Sharu Hirbo & another* in the High Court,¹¹⁶ the appellants claimed that the distribution of the deceased's husband estate by the Kadhi was discriminatory against her (the wife of the deceased) and her 6 daughters. This was due to the fact that the Kadhi decision denied them entitlement to inherit the deceased's most prized property where the matrimonial home was located. This asset was distributed amongst the deceased's 4 sons while none of the 6 daughters were given any land. The Court held that the Kadhi erred in its decision as it misconstrued the conditions of a valid will and gift in Islam as the Kadhi held that a Muslim is free to distribute his property however he wanted. The Kadhi held that the deceased bequeathed this contested property to the sons and therefore, the wife and 6 daughters were not entitled to inherit the property. Therefore, the Court held that the application of Islamic intestate succession law was ideal in this case as the deceased died as a Muslim, despite one of the appellants main appeal submissions being their violation of their right to equality under Article 27 of the Constitution.

Therefore, according to the Court's holding, the daughters were to get half of what the sons would get in accordance with Islamic intestate laws. The application of Islamic intestate succession law

¹¹⁵ (2020) eKLR.

¹¹⁶ (2020) eKLR.

discriminated against the appellants as they still got half of what their brothers were getting. The appellants' submission on the violation of their right to equality and non-discrimination was still a matter that was yet to be resolved. This is because Islamic intestate succession laws do not consider the appellants right to equality and non-discrimination under Article 27 of the Constitution as it limits this right in accordance with Article 24(4) of the Constitution.

The above two cases show that the doctrine of stare decisis is not applied in relation to Islamic intestate succession law as lower courts still give Islamic intestate succession law precedence despite the *CKC V ANC* case in the Court of Appeal which decided contrary.

2.4 Conclusion

The Chapter has discussed the relevant Quran and Hadith verses on the Islamic legal framework on intestate succession together with the appellate Court's interpretations of Kadhi Court decisions and commentaries by different scholars on the interpretations of the Holy Books. The chapter has also established that most appellate court decisions apply Islamic law in intestate succession disputes regarding deceased Muslim's estates on the basis of Article 24(4) of the Constitution and Section 2(3) of the Law of Succession Act. However, the chapter also exemplifies the decision by the Court of Appeal in the *CKC v ANC* (2019) case that has promoted equality and non-discrimination amongst women by disputing the discriminatory application of the Islamic intestate succession laws. The chapter also reviews court precedence that has continued to apply Islamic intestate succession law discriminatorily against women. This is despite the binding decision of the Court of Appeal that declared Islamic law application should be in accordance with the constitutional guarantees of the right to equality and non-discrimination.

This has led to women bearing the brunt of the application of Islamic intestate laws by being discriminated against on the basis of religion and gender in addition to the limitation of equality, contrary to the constitutional values and principles of non-discrimination and equality.

CHAPTER THREE: ARTICLE 24(4) OF THE CONSTITUTION OF KENYA (2010)

3.1 Introduction

This chapter delves into an examination of Article 24(4) of the Constitution, which presents a limitation to the right to equality by allowing for the application of Islamic law in matters of inheritance. The analysis will scrutinize if this provision aligns with the overarching constitutional principles of equality and non-discrimination, particularly in the context of Kenya's obligations to uphold the rights of women. By exploring the intersection of Islamic intestate succession law and these constitutional values, this chapter aims to assess whether the current legal framework effectively balances religious and cultural considerations with the broader human rights commitments of the state.

3.2 Overview of Article 24 (4) of the Constitution of Kenya (2010)

Article 24 (4) of the Constitution states “The provisions of this Chapter on equality shall be qualified to the extent strictly necessary for the application of Muslim law before the Kadhis’ courts, to persons who profess the Muslim religion, in matters relating to personal status, marriage, divorce and inheritance.”¹¹⁷ Simply, Article 24(4) of the Constitution limits the provisions of equality to the extent that the equality provisions are inconsistent with the strict application of Islamic law in matters of personal status, and in this case Islamic intestate succession matters. However, the Constitution gives the Kadhi Courts the jurisdiction to hear intestate succession matters where the parties profess the Islamic faith and consent to the jurisdiction of the Kadhi court.¹¹⁸

Article 24 (4) gives protection to the practice of Islamic intestate succession law such that the practice is not limited by the statutory intestate succession laws that is inconsistent to the extent Islamic intestate succession law cannot be practiced.¹¹⁹ This protection accorded to the application of Islamic intestate succession law by Article 24(4) is present in Section 2(3) and (4) the Law of Succession Act. Section 2(3) and (4) of Law of Succession Act provide that any provision in the

¹¹⁷ Article 24(4), *Constitution of Kenya* (2010).

¹¹⁸ Article 170, *Constitution of Kenya* (2010).

¹¹⁹ Article 24(4), *Constitution of Kenya* (2010).

Law of Succession Act that is contrary to Islamic intestate succession law will not be taken into consideration in the application of this Islamic law in the Kadhi Courts.¹²⁰ Additionally, as analysed in the previous chapter, court jurisprudence has held that the protection of Islamic intestate succession practices by Article 24 (4) and Section 2(3) Law of Succession Act has extended to where parties who do not practice the Islamic faith, such as Muslim women who have married non-Muslim men and non-Muslim wives, have been required to submit to the Kadhi Court jurisdiction since the deceased was a practicing Muslim before their death.¹²¹ The extension of the Kadhi Court jurisdiction to non-Muslims is contrary to Article 170(5) of the Constitution, which states that for Islamic law to be practiced, all parties have to profess the Islam religion in addition to consenting to the jurisdiction of the Kadhi courts. The present practice by Kadhi courts in applying Islamic intestate succession laws contrary to Article 170(5) of the Constitution proves disadvantageous to non-Muslim women as Islamic intestate law doesn't allow women from other faiths to inherit the estate of the deceased.¹²²

3.3 Equality and Non-Discrimination

3.3.1 Contradictory Constitutional Provisions: Introduction

Article 10 of the Constitution of Kenya includes equality and non-discrimination as one of the national values and principles of governance which are binding on all state organs, state and public officers, and all persons in applying and interpreting the Constitution or any law.¹²³ The binding nature of equality and non-discrimination is further underscored in Article 20 which puts equality in the list of values that the Court is to promote when interpreting the Bill of Rights.¹²⁴ In addition, Article 21 establishes a duty of state organs to address the needs of vulnerable groups such as women.¹²⁵ Furthermore, Article 27 of the Constitution bestows every person with equality and equal protection and benefit before the law.¹²⁶ Also, the state is obligated to prevent direct or indirect discrimination against a person on the basis of religion.¹²⁷ To put further emphasis, the

¹²⁰ Section 2 (3) and (4), *Law of Succession Act* (Cap. 160 of 1981)

¹²¹ *In the Matter of the Estate of Ishmael Juma Chelanga* (2002) KEHC 1177 (KLR). See also *Ramadhan Mustafa v Zulfa Ngasia Juma* (2019) eKLR.

¹²² Mujuzi J, 'The Islamic law of marriage and inheritance in Kenya', 395.

¹²³ Article 10, *Constitution of Kenya* (2010).

¹²⁴ Article 20 (4)(a), *Constitution of Kenya* (2010).

¹²⁵ Article 21 (3), *Constitution of Kenya* (2010).

¹²⁶ Article 27 (1), *Constitution of Kenya* (2010).

¹²⁷ Article 27 (4), *Constitution of Kenya* (2010).

Constitution states that it is to be interpreted in a manner that promotes its values which include equality and non-discrimination.¹²⁸ A contradiction arises between the aforementioned articles of the Constitution and Article 24(4) of the Constitution, which limits the right to equality on the basis of religion. Hence, a dilemma is created when the Courts are called upon to interpret these provisions as the Constitution must be interpreted holistically to ensure that no single provision undermines another and with the intention of maintaining harmony and integrity of the constitutional framework.¹²⁹

3.3.2 Practical Situations of Discrimination against Women in the Application of Islamic Intestate Succession Laws

It is evident that the Constitution of Kenya was drafted with equality, protection of vulnerable groups and respect for religious diversity in mind when interpreting the Bill of Rights and the Constitution as a whole.¹³⁰ However, the establishment of the Kadhi Courts, with jurisdiction over inheritance matters where all parties are Muslim, showcases the interpretation dilemma stated in the previous subsection faced by courts when called upon to interpret the Bill of Rights.¹³¹ Therefore, the courts tend to promote the respect the religious diversity while denying vulnerable groups such as women the protection and equality they deserve in their interpretations of the Constitution. These interpretations by the Kadhi courts cause women, including non-Muslim, to be coerced to submit to the jurisdiction of the Kadhi.¹³² Therefore, the interpretation dilemma causes a contradiction of the jurisdiction accorded to the Kadhis by the Constitution, where all parties have to profess the Muslim faith and consent to its jurisdiction.¹³³

It is clear that women have been discriminated against by the Courts in their determination of Islamic intestate succession matters.¹³⁴ These concerns on potential discriminatory judgements are

¹²⁸ Article 259 (1)(a), *Constitution of Kenya* (2010).

¹²⁹ *Centre for Rights Education and Awareness & another v. John Harun Mwau & 6 others* (2012) eKLR

¹³⁰ Fitzgerald J, 'The road to equality? The right to equality in Kenya's new constitution' 5 *The Equal Rights Review*, 2010, 57.

¹³¹ Article 170 (5), *Constitution of Kenya* (2010).

¹³² Ocharo B, 'Kadhi blocked from hearing inheritance row involving mixed-faith family members' *The Nation*, 19 August 2023 <https://nation.africa/kenya/counties/mombasa/kadhi-blocked-from-hearing-inheritance-row-involving-mixed-faith-family-members-4351256> on 28 March 2025.

¹³³ Article 170 (5), *Constitution of Kenya* (2010).

¹³⁴ Sungay M, 'Do women face discrimination under Islamic law of succession?', 454-455 <https://www.scielo.org.za/pdf/ladd/v27/17.pdf> on 17 February 2025.

enhanced by Article 24 which limits the right to equality and non-discrimination to the extent that is strictly necessary for the application of Muslim intestate succession laws.¹³⁵ Additionally, Sukyan Hassan, Deputy Chief Kadhi of Kenya, stated that one of the principles of Sharia law is that Islamic law is to be viewed as the principle and supreme law when arriving at their judicial decisions since Islamic law is the law given by God; thus, they cannot go against it.¹³⁶ This principle is contrary to the sovereignty of the Constitution of Kenya over other laws in Kenya,¹³⁷ as the Kadhis do not interpret Islamic intestate succession law in accordance with the Constitution but in accordance with the Quran which is unconstitutional.¹³⁸

3.3.3 Effects of Article 24(4) of the Constitution of Kenya (2010)

The application of Islamic intestate succession laws has had a great impact on the rights of women in Kenya. For instance, Islamic women are denied the right to equality through the unequal distribution of the estate through the 2:1 ration in favour of the men.¹³⁹ Women not of the Islamic faith are denied the right to inherit due to their difference in faith, even though these women may have been the daughters or wives of the deceased.¹⁴⁰ The denial of inheritance for non-Muslim women is due to Kadhi Courts stating that non-Muslims cannot inherit from Muslims according to Islamic intestate succession laws.¹⁴¹ Therefore, the application of Islamic intestate succession law brings about discrimination on the basis of religion.¹⁴²

The application of Islamic intestate law goes against Article 20(2) of the Constitution as the women trapped in this Islamic intestate laws' labyrinth, especially those coerced to submit to the Kadi court jurisdiction, are unable to enjoy their right to equality and non-discrimination to the full extent.¹⁴³ Additionally, it is contrary to Article 27 which gives every person equal benefit and protection of the law in addition to every person being equal before the law.¹⁴⁴ Consequently, the

¹³⁵ Article 24 (4), *Constitution of Kenya* (2010).

¹³⁶ Interview with Sukyan Hassan, Deputy Chief Kadhi, based on the Quran at the Kadhi Courts, Nairobi on 24 February 2025.

¹³⁷ Article 2, *Constitution of Kenya* (2010).

¹³⁸ Article 2(4), *Constitution of Kenya* (2010).

¹³⁹ Mostafa Md, 'Rules and practices of women's inheritance rights in Islam, 15.

¹⁴⁰ Saujan I, Mazahir S and Ibrahim N, 'Islamic law of inheritance and its implications amongst Muslim society: an empirical study' 7 *Journal of Contemporary Islamic Law* 1, 2022, 40.

¹⁴¹ *Ramadhan Mustafa v Zulfa Ngasia Juma* (2019)eKLR.

¹⁴² Article 27 (4), *Constitution of Kenya* (2010).

¹⁴³ Article 20 (2), *Constitution of Kenya* (2010).

¹⁴⁴ Article 27 (1) and (2), *Constitution of Kenya* (2010).

Kadhis interviewed by Kevin Wanyonyi in his thesis are of the opinion that a defendant (most of the time being women) has no choice but to submit to the Kadhi court jurisdiction, despite some of the defendants being non-Muslim.¹⁴⁵

3.4 Human Rights Obligations

3.4.1 The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

The CEDAW came into force in Kenya on 9 March 1984. The CEDAW treaty was adopted to establish measures necessary for the elimination of discrimination against women in all its forms and manifestations.¹⁴⁶ The treaty provides the means of eliminating the discrimination against women which include taking appropriate measures to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.¹⁴⁷

CEDAW prohibits State parties from engaging in any practices that are discriminatory against women and ensure that public organisations, by taking all reasonable and necessary measures, act in compliance with the obligation.¹⁴⁸ Moreover, the treaty provides that State parties are obligated to establish legislation amongst other measures that protect women from the cultural aspects that may deny women the opportunity to enjoy their rights and freedoms on an equal basis as men.¹⁴⁹ In totality, the treaty obligates the State parties to condemn discrimination against women in all kinds of forms.

Despite being a State party of the CEDAW, Kenya still advocates for the practice of Islamic intestate succession laws through its Constitution.¹⁵⁰ CEDAW requires State parties, by taking all appropriate measures, to eliminate practices that promote the superiority complex based on

¹⁴⁵ Wanyonyi K, 'The Kadhis' courts in Kenya: towards enhancing access to justice for Muslim women' Unpublished, Lund University, Lund, 2016, 66-68.

¹⁴⁶ Preamble, *Convention on the elimination of all forms of discrimination against women*, 18 December 1979, Vol. 1259.

¹⁴⁷ Article 2 (f), *Convention on the elimination of all forms of discrimination against women*, 18 December 1979, Vol. 1259.

¹⁴⁸ Article 2 (d), *Convention on the elimination of all forms of discrimination against women*, 18 December 1979, Vol. 1259.

¹⁴⁹ Article 3, *Convention on the elimination of all forms of discrimination against women*, 18 December 1979, Vol. 1259. Islamic law establishes the Islamic culture that does not allow women to enjoy their rights and freedoms equally in relation to men.

¹⁵⁰ Article 24(4), *Constitution of Kenya* (2010).

gender.¹⁵¹ However, Islamic intestate succession law practices are based on the male superiority complex and stereotyped roles for the women and men.¹⁵² Additionally, despite public authorities being obligated to prevent discrimination against women, state agencies such as the Kadhi Courts enforce this discrimination against women in the 2:1 distribution ratio of a deceased's estate.¹⁵³ The Kadhis also do this by denying daughters of the deceased who married non-Muslim men or the wife of the deceased who had not converted to Islam rights to the intestate estate of the deceased.¹⁵⁴

3.5 Conclusion

In conclusion, Article 24(4) of the Kenyan Constitution, while intended to protect Islamic inheritance practices, creates a significant conflict with the constitutional guarantees of equality and non-discrimination, particularly concerning women. This provision, coupled with Section 2(3) of the Law of Succession Act, effectively prioritizes Islamic law over secular law in inheritance matters before Kadhi Courts. This leads to situations where individuals, including Muslim daughters and non-Muslims women, are subjected to Islamic inheritance rules that deny them equal rights and protections. This contradiction between Article 24(4) and other constitutional provisions, along with Kenya's obligations under international human rights treaties like CEDAW and UNCRC, highlights a systemic tension between respecting religious diversity and upholding fundamental rights. This raises serious concerns about Kenya's commitment to equality, the protection of vulnerable groups, and its adherence to international human rights standards. This, consequently, demands a re-evaluation of the application and interpretation of Article 24(4) to ensure that religious practices do not undermine fundamental rights and freedoms.

¹⁵¹ Article 5 (a), *Convention on the elimination of all forms of discrimination against women*, 18 December 1979, Vol. 1259.

¹⁵² Eissa D, 'Constructing the notion of male superiority over women in Islam: the influence of sex and gender stereotyping in the interpretation of the Qur'an and the implications for a modernist exegesis of rights' *Women Living under Muslim Laws*, WLUML Occasional Paper No.11, November 1999, 20 <https://opendata.uni-halle.de/bitstream/1981185920/106549/102/1827650761.pdf> on 4 April 2025.

¹⁵³ Mostafa Md, 'Rules and practices of women's inheritance rights in Islam,15.

¹⁵⁴ Junaidi, 'The basis of judges 'considerations on decisions of different religious heritage in Islamic law perspective' 20 *Nurani* 2, 2020.

CHAPTER FOUR: BEST PRACTICES IN SINGAPORE'S APPLICATION OF ISLAMIC INTESTATE SUCCESSION LAWS

4.1 Introduction

This chapter will assess the best practices in Singapore regarding the application of Islamic inheritance laws and their relevance to Kenya's legal framework. Singapore provides a compelling case study due to its successful integration of Islamic inheritance laws within a pluralistic legal system, balancing religious principles with civil law considerations. Kenya, similarly, upholds a plural legal system that accommodates Islamic inheritance laws alongside statutory succession laws and African customary laws. Additionally, Singapore is majorly rooted in the Shafi'i school of thought interpretation of Islamic intestate succession laws and has an Islamic minority comparable to Kenya. By examining Singapore's legal framework, Kenya can explore ways to enhance fairness, inclusivity, and efficiency in its Islamic inheritance system.

By adopting the best practices of Singapore, Kenya could develop a more equitable and effective Islamic inheritance system, addressing concerns about gender discrimination and the exclusion of non-Muslim family members while preserving the integrity of Islamic law. This chapter will further explore these aspects in detail, highlighting their potential application within Kenya's legal and social context.

4.2 Intestate Succession Legal Framework in Singapore

The Singapore Constitution provides that everyone is equal before the law.¹⁵⁵ The Singapore Constitution in Article 12 also provides for the use of Islamic law for the Muslim minority in matters concerning personal law as it does not invalidate or prohibit any laws regulating personal law.¹⁵⁶ Singapore has a pluralistic intestate succession legal framework based on religious beliefs which include the Intestate Succession Act that applies to non-Muslims and the Administration of Muslim Law Act 1966 that applies to the Islamic population.¹⁵⁷ The Singapore legal system integrates Islamic inheritance law into its civil system for Muslim estates where civil courts handle

¹⁵⁵ Article 12(1), *Constitution of Singapore* (1965).

¹⁵⁶ Article 12 (3), *Constitution of Singapore* (1965).

¹⁵⁷ Burns F, 'Intestacy law in Australia, England and Singapore- another aid to social sustainability in ageing population?' *Singapore Journal of Legal Studies*, 2012, 378---< <https://www.jstor.org/stable/24872217> > on 5 February 2025.

probate and administration, enforce wills (if compliant with Muslim law) and distribute remaining assets in accordance with Islamic rules.¹⁵⁸

The Administration of Muslim Law Act is Singapore's main legislation that regulates the application of the Islamic legal framework. The Administration of Muslim Law Act provides that the intestate estates of Muslims domiciled in Singapore are to be distributed according to Muslim Law.¹⁵⁹ The Act further provides for the sources of Islamic law to be used by the Syariah Courts and for the *Majlis Ugama Islam Singapura* (MUIS) (Islamic Religious Council of Singapore), that have been established by the Act,¹⁶⁰ in deciding questions of succession in Islamic law.¹⁶¹ Syariah Courts are courts with jurisdiction to determine matters relating to Islamic personal laws where all parties are Muslim or were married under Muslim law.¹⁶² MUIS is a statutory body established by the Administration of Muslim Law Act to advise the President of Singapore on matters relating to Islam in Singapore among other duties.¹⁶³

Additionally, the Syariah Courts have been given jurisdiction by the Administration of Muslim Law Act to determine the beneficiaries entitled to the estate, when a Court or authority need to know the beneficiaries and their share under Muslim law, or when a potential beneficiary directly applies to the Syariah Court.¹⁶⁴ The Syariah Courts will therefore provide a certificate of inheritance that states the Courts' opinion on who are the beneficiaries and the shares they are to receive according to Islamic law.¹⁶⁵ These certificates are used by civil law courts to determine the shares of the heirs, thus, effectively bridging the Islamic and secular legal processes.¹⁶⁶ The Syariah Courts also centre their jurisdiction on the legal issues of the parties in their application of Islamic Intestate Succession laws. Additionally, when finalising a decision, the Courts may ask parties to present their questions on the legal issues, however, the Courts do not have jurisdiction to either hear evidence or decide on questions of fact when making the decision.¹⁶⁷ Where the case is

¹⁵⁸ Abbas A, 'The Islamic legal system in Singapore' 21 *Washington International Law Journal* 1, 2012, 177.

¹⁵⁹ Section 112, *Administration of Muslim Law Act* (1966).

¹⁶⁰ Part 2 and 3, *Administration of Muslim Law Act* (1966).

¹⁶¹ Section 114, *Administration of Muslim Law Act* (1966).

¹⁶² Section 35, *Administration of Muslim Law Act* (1966).

¹⁶³ Section 55(3), *Administration of Muslim Law Act* (1966).

¹⁶⁴ Section 115 (1), *Administration of Muslim Law Act* (1966).

¹⁶⁵ Section 115 (2), *Administration of Muslim Law Act* (1966).

¹⁶⁶ Abbas A, 'The Islamic legal system in Singapore', 177.

¹⁶⁷ Section 115 (2), *Administration of Muslim Law Act* (1966).

complex the Syariah Courts may refer to the MUIS for its opinion then certify their decision in accordance with the opinion by the MUIS.¹⁶⁸

4.3 Best Practices in the Application of Islamic Intestate Succession Laws

4.3.1 Broad interpretation

The Administration of Muslim Law Act provides for a broad interpretation in the distribution of a Muslim deceased's intestate estate under Islamic law by stating that the Islamic intestate succession laws are to be modified according to Malay customs (customs of the main ethnic group in Singapore) where applicable.¹⁶⁹ Additionally, the Act states that property, such as jointly acquired property, in the estate is to be distributed at the court discretion.¹⁷⁰ Furthermore, in Singapore, Islamic inheritance law (*faraid*) is not the only way in Islamic law for Muslims to administer their estate. Islamic law provides for other administration instruments such as gifts (*hibah*) and endowment (*waqf*) which could be used individually or together with *faraid* in the estate distribution.¹⁷¹ The flexibility in the Islamic law application, through the use of alternative distribution mechanisms, has allowed the distribution of estates equally amongst all eligible heirs regardless of their gender where all the heirs have voluntarily consented to the equal distribution and waived the *faraid* stipulation.¹⁷² For instance, an estate can be distributed through a vow (*wasiyat nazariyah*) made by the deceased before his death where he bequeaths his estate to all his dependants, including his wives and daughters, on equal shares regardless of the gender.¹⁷³ This is however void when one of the heirs challenges the *wasiyat nazariyah* and argues that the estate should be distributed under *faraid law* as per the inheritance certificate provided by the Syariah courts.¹⁷⁴

4.3.2 Singapore's Legal System

Singapore has a legal pluralistic system which establishes the interplay between different legal systems and in this case the Islamic legal system and the secular legal system. Therefore, so as to promote public interest and promote flexibility in the application of the Islamic intestate succession

¹⁶⁸ Section 115 (3), *Administration of Muslim Law Act* (1966).

¹⁶⁹ Section 112(1), *Administration of Muslim Law Act* (1966).

¹⁷⁰ Section 112(3), *Administration of Muslim Law Act* (1966).

¹⁷¹ Hassan M, 'Equal shares of inheritance for Muslim children: a forgotten perspective' AMP Singapore, 2021, 21.

¹⁷² *Kumpulan Fatwa 3* (1998) Muslim Religious Affairs Division Jawatankuasa Fatwa of Singapore.

¹⁷³ Hassan M, 'Equal shares of inheritance for Muslim children: a forgotten perspective' AMP Singapore, 2021, 22.

¹⁷⁴ *Mohamed Ismail bin Ibrahim and others vs Mohammad Taha bin Ibrahim* (2004) The High Court of Singapore.

laws, the MUIS relies on all Sunni Islamic schools of thought when issuing a ruling (*fatwa*) in the Fatwa Committee in addition to the Shafi'i school.¹⁷⁵

Additionally, appeals from the Syariah court go to the Appeals Board which is constituted by the President of the MUIS¹⁷⁶ and the *fatwas* from the MUIS are taken to the High Court. With regard to the *fatwas* that are taken to High Court, judges of the High Court are not obliged to seek an opinion from the MUIS in addition to past *fatwas* relevant to the dispute not binding on the Court.¹⁷⁷ The Court, however, abides by some of the MUIS *fatwas*, specifically those that do not contradict statute, rule in favour of another interpretation of Muslim law applicable to the case or contradict civil law principles such as joint tenancy.¹⁷⁸

Moreover, over the years the MUIS have interpreted Muslim law on the basis of civil law to reduce the hardship Muslim Singaporeans face due to conflict of legal issues.¹⁷⁹ For instance, MUIS announced that the property share a deceased Muslim held under joint tenancy was considered part of their estate as the right of survivorship used in property was not applicable.¹⁸⁰

4.4 Comparing the Islamic Intestate Succession Legal Framework of Kenya and Singapore

4.4.1 Similarities

The Kenyan and Singaporean legal frameworks have both adopted the legal pluralism approach in the application of the Islamic succession legal frameworks.¹⁸¹ Additionally, this application of Islamic succession law is enforced in the Constitution of Kenya¹⁸² and the Constitution of Singapore¹⁸³ which both limit the application of Islamic law to personal law such as inheritance

¹⁷⁵ Abbas A, 'The Islamic legal system in Singapore', 169.

¹⁷⁶ Section 55, *Administration of Muslim Law Act* (1966).

¹⁷⁷ Abbas A, 'The Islamic legal system in Singapore', 171.

¹⁷⁸ *Shafeeg Bin Salim Talib and Another v. Fatimah Bte Abud Bin Talib and Others* (2009) The Supreme Court of Singapore.

¹⁷⁹ Abbas A, 'The Islamic legal system in Singapore', 171.

¹⁸⁰ Ramlan M, 'Application of Muslim law and the survivorship of joint tenancies in Singapore' *Singapore law Review*, 2015-2016, 2---
<https://static1.squarespace.com/static/55c714f0d634b061b5/t/57270c32044262921a25bad8/1462176875141/2015-The+Fara%27id%2C+Joint+Tenancy+and+the+Application+of+Muslim+Law+in+Singapore> on 10 February 2025. These certain standards were that the surviving joint property owner would get 50% of the property's value while the other 50% belonging to the deceased's estate and distributed according to *faraid*.

¹⁸¹ Burns F, 'Intestacy law in Australia, England and Singapore', 378---< <https://www.jstor.org/stable/24872217> > on 5 February 2025. See also Mutema A, 'The interface between customary laws of succession in the traditional justice system and the formal justice system in Kenya' Unpublished, University of Western Cape, Perth, 2019, 64.

¹⁸² Article 24(4), *Constitution of Kenya* (2010).

¹⁸³ Article 12 (3), *Constitution of Singapore* (1965).

laws. These provisions also limit the right of everyone to be treated equally before the law provided for in the different Constitutions,¹⁸⁴ since Islamic intestate succession laws have been claimed to have discriminated against women based on gender and religion.¹⁸⁵

Additionally, Singapore and Kenya have each enacted legislations that provide for the application of Islamic intestate succession laws, namely, the Administration of Muslim Law Act and the Law of Succession Act respectively (¹⁸⁶ These legislations also provide for the establishment of the Syariah courts in Singapore and Kadhi Courts in Kenya, that have jurisdiction over the enforcement of Islamic intestate law.¹⁸⁷ Kenya and Singapore have the major school of thought being the Shafi'i school¹⁸⁸, however, the Syariah and Kadhi Courts will use the other schools of thought in addition to the Shafi'i school for the interpretation of Islamic law in the intestate inheritance disputes.¹⁸⁹¹⁹⁰

4.4.2 Differences

The application of Islamic intestate succession law is done differently in Kenya and Singapore. The difference in the application is evident in the Administration of Muslim Law Act of Singapore which distributes the powers regarding the application of the Islamic law between the Syariah Courts and the MUIS which adjudicate and give opinions on Islamic intestate succession cases.¹⁹¹ However, in Kenya, all powers with regard to the application of Islamic law are vested in the Kadhi courts with emphasis on Islamic intestate succession law.¹⁹² Kenya lacks an independent administrative body like the MUIS that provides religious guidance and handles broader Islamic legal and religious concerns effectively.¹⁹³ Additionally, the separation between the Syariah courts

¹⁸⁴ Article 12 (1), *Constitution of Singapore* (1965). See also, Article 27 (1), *Constitution of Kenya* (2010)

¹⁸⁵ UN Committee on the Elimination of Discrimination Against Women (CEDAW). (1994). CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations, 34.

¹⁸⁶ Section 112, *Administration of Muslim Law Act* (1966) and Section 2(3) *Law of Succession Act* (Cap. 160 of 1972) respectively.

¹⁸⁷ Section 34, *Administration of Muslim Law Act* (1966) and Section 48 (2), *Law of Succession Act* (Cap. 160 of 1972) respectively.

¹⁸⁸ REINVENT Programme, *Study to examine the influence of contemporary Islamic ideologies in Kenya: Mandera, Garissa, Marsabit and Isiolo counties*, June 2021, 27. See also, Abbas A, 'The Islamic legal system in Singapore', 169.

¹⁸⁹ Interview with Sukyan Hassan, Deputy Chief Kadhi, based on the Quran at the Kadhi Courts, Nairobi on 24 February 2025.

¹⁹⁰ Abbas A, 'The Islamic legal system in Singapore', 169.

¹⁹¹ Section 5,35 and 115, *Administration of Muslim Law Act* (1966).

¹⁹² Section 48 (2), *Law of Succession Act* (Cap. 160 of 1972) respectively.

¹⁹³ Section 5, *Administration of Muslim Law Act* (1966).

and the MUIS ensures religious governance remains independent and guided by Islamic laws.¹⁹⁴ Nonetheless, with Kadhi courts being under the judiciary,¹⁹⁵ religious governance in Kenya is not under an independent body¹⁹⁶ and is guided by Islamic law to the extent that is not inconsistent with the Constitution of Kenya.¹⁹⁷

Furthermore, Kenyan Kadhi courts have decided Islamic intestate succession matters where parties to the dispute are non-Muslim due to the fact that the deceased was Muslim.¹⁹⁸ This is not the case in Singapore as the Syariah courts have been given jurisdiction over Muslim parties only leading the Court to determine whether the parties before the Court are Muslims.¹⁹⁹ The Syariah Courts have lacked jurisdictions in cases simply because the parties have claimed they are Muslim and after determination of the Court, discovered the party was not Muslim, therefore, making the Administration of Muslim Law Act inapplicable to them.²⁰⁰ Moreover, Islamic intestate succession laws that are contradictory to the civil intestate legislation are not binding on the civil courts in Singapore in Islamic intestate succession disputes that involve non-Muslims as the Islamic intestate laws don't account for non-Muslims in the *faraid*.²⁰¹ By taking into account non-Muslims in the distribution of the Islamic intestate estate, Singapore practices the Islamic principles of reciprocity (do good to others) and responsibility through will making in the distribution of an Islamic estate.²⁰² However, in Kenya, Islamic intestate succession laws are given priority over civil legislation, with any provision of the Law of Succession Act that is contrary to the Islamic laws not being applied in the administration of the deceased Muslim's estate according to Section 2(3) of the Act.²⁰³

Additionally, the Syariah courts and MUIS have used other inheritance distribution instruments provided in the Quran such as obligatory bequests, vows and gifts instead of focusing on *faraid*

¹⁹⁴ Part 2 and 3, *Administration of Muslim Law Act* (1966).

¹⁹⁵ Article 169, *Constitution of Kenya* (2010).

¹⁹⁶ Office of the Registrar Magistrates Court, *Magistrates and Kadhis courts strategic plan 2022-2026*, 3 July 2023, 6.

¹⁹⁷ Article 2(4), *Constitution of Kenya* (2010).

¹⁹⁸ *Ramadhan Mustafa v Zulfa Ngasia Juma* (2019)eKLR.

¹⁹⁹ Section 35, *Administration of Muslim Law Act* (1966).

²⁰⁰ *Zainudin Bin Mohamed v. Sharifah Alpha Binte Syed Ali* (Appeal Case No. 19/1997) Appeal Board of Singapore.

²⁰¹ Abbas A, 'The Islamic legal system in Singapore', 171.

²⁰² Virtual interview with Jadeed Moza, Lecturer University of Nairobi, Faculty of law, on 26 February 2025.

²⁰³ Section 2 (3), *Law of Succession Act* (Cap.160 of 1972).

(Islamic inheritance law).²⁰⁴ This has reduced discrimination faced by women and non-Muslims caused by the interpretation of Islamic laws. Kadhi courts have however mostly focused on the interpretation of *faraid* in the distribution of a deceased Muslim's estate in addition to not adopting the alternative legal instruments, thus, continuing to discriminate against women and non-Muslims.²⁰⁵

4.4.3 Adoption of Singapore's Best Practices in Kenya's Islamic Legal Framework

Singapore's approach to Islamic inheritance law provides a structured, fair, and gender-conscious framework while remaining faithful to Islamic principles.²⁰⁶ To enhance fairness, gender equity, and inclusivity in Kenya's Islamic legal system, several key adaptations could be considered. First, establishing a judicial body similar to Singapore's Syariah Court within Kenya's Kadhis' Courts could ensure consistent adjudication of inheritance disputes. Additionally, promoting alternative inheritance tools such as vows and gifts, and obligatory bequests would empower Muslim women and provide financial security for vulnerable heirs, including non-Muslim family members. Furthermore, better integration between Islamic and statutory succession laws, consisting in harmonising legislation that guide users through both Islamic and statutory requirements, would create legal coherence, reducing conflicts between religious and civil inheritance frameworks. By adopting these best practices from Singapore, Kenya could develop a more equitable and just Islamic inheritance system that upholds both religious principles and contemporary social realities.

However, the adoption of some of the Singaporean practices such as obligatory bequests would bring strong backlash amongst the Muslim communities as these practices from Singapore are seen to dilute the principles of Sharia law.²⁰⁷ Also, the use of the Islamic laws on property by Singapore to account for equitable distribution of the Muslim deceased's estate is frowned upon by Islamic scholars in Kenya who insist that the *faraid* should be the only way to distribute Islamic intestate

²⁰⁴ Hassan M, 'Equal shares of inheritance for Muslim children: a forgotten perspective' AMP Singapore, 2021, 22-23.

²⁰⁵ *Fatuma Anab Mohamed Haji & 5 others v Asha Abdullahi & 3 others* (2018) eKLR.

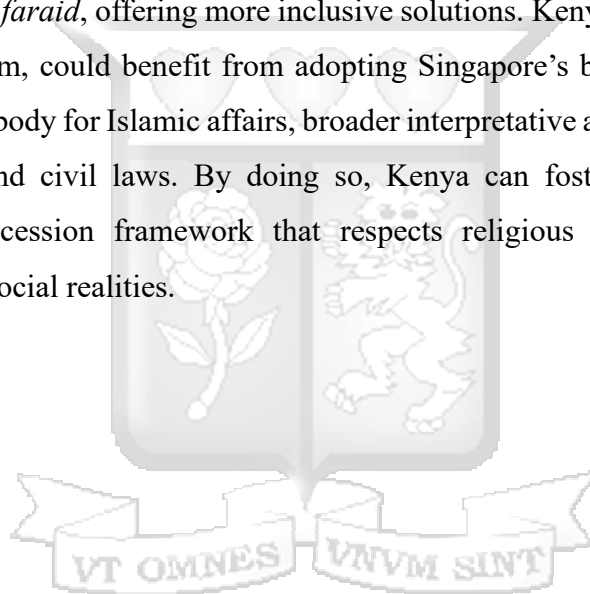
²⁰⁶ Hooker MB, 'Succession to Muslim estates in Singapore', 210.

²⁰⁷ Interview with Sukyan Hassan, Deputy Chief Kadhi, based on the Quran at the Kadhi Courts, Nairobi on 24 February 2025.

property.²⁰⁸ Furthermore, the Muslim community in Kenya states that alternative mechanisms of intestate distribution that are contrary to the *faraid* should not be applied.²⁰⁹

4.5 Conclusion

In conclusion, Singapore's approach to Islamic inheritance law demonstrates a well-structured and balanced integration of religious and civil legal frameworks, ensuring both adherence to Islamic principles and alignment with contemporary societal needs. Through legal pluralism, the Syariah Courts, and the MUIS, Singapore has created a system that maintains Islamic authenticity while promoting gender equity and legal flexibility. The incorporation of alternative inheritance mechanisms such as *hibah*, *wasiyat nazariyah*, and obligatory bequests has mitigated discriminatory aspects of *faraid*, offering more inclusive solutions. Kenya, facing challenges in its Islamic inheritance system, could benefit from adopting Singapore's best practices, including a dedicated administrative body for Islamic affairs, broader interpretative approaches, and structured integration of Islamic and civil laws. By doing so, Kenya can foster a more equitable and modernized Islamic succession framework that respects religious values while addressing contemporary legal and social realities.



²⁰⁸Virtual interview with Jadeed Moza, Lecturer University of Nairobi, Faculty of law, on 26 February 2025.

²⁰⁹ Interview with Sukyan Hassan, Deputy Chief Kadhi, based on the Quran at the Kadhi Courts, Nairobi on 24 February 2025.

CHAPTER FIVE: FINDINGS, RECOMMENDATIONS AND CONCLUSIONS

5.1 Introduction

This chapter presents the key findings, conclusions, and recommendations of the study. It evaluates whether the research objectives and hypotheses have been fulfilled and provides insights into potential reforms that enable the enhancement the application of Islamic inheritance laws in Kenya while ensuring alignment with constitutional principles of equality and non-discrimination.

5.2 Key Findings

5.2.1 Legal Conflict Between Islamic Law and Constitutional Principles

The study establishes that Islamic inheritance laws, particularly the rules on intestate succession, often conflict with constitutional principles of equality and non-discrimination. Women and non-Muslims are subjected to differential treatment under Islamic inheritance laws, raising concerns about gender and religious discrimination.

5.2.2 The Role of Article 24(4) in the Limitation of Rights

Article 24(4) of the Constitution of Kenya limits the right to equality to the provisions on equality that are consistent with Islamic law in matters of personal law, including Islamic intestate succession laws. However, this provision has led to judicial inconsistencies,²¹⁰ particularly in cases where women have received half the share their male counterparts receive in the distribution of the estate in accordance with the *faraid* (Islamic inheritance laws). Also, Muslim women who have been married outside the faith have been excluded from the intestate distribution of the deceased Muslim's estate due to the application of the *faraid*.

5.2.3 Judicial Interpretations and Legal Precedents

There are cases regarding Islamic intestate succession where Kenyan courts have issued contradictory rulings regarding the application of Islamic inheritance laws with some courts upholding the application of Islamic law under Article 24(4) while others taking a broader interpretation that incorporates constitutional values of equality and non-discrimination.

²¹⁰ *Aisha Brek v Aisha Mohamed Nzawa & another* (2020)eKLR and *Habiba Sharu Hirbo v Ibrahim Sharu Hirbo & another* (2020) eKLR.

5.2.4 Best Practices from Singapore

Singapore's application of Islamic laws on intestate succession is assessed, and the best practices are derived from the Islamic legal system of Singapore. This includes the role of the Syariah Courts and MUIS, the issuance of inheritance certificates, and the incorporation of alternative inheritance mechanisms such as *hibah* (gifts) and *wasiyat nazariyah* (vows). These practices have helped balance religious principles with modern legal frameworks, ensuring greater equity in inheritance matters.

5.2.5 The Need for Legal and Institutional Reforms

The findings indicate that the existing legal framework in Kenya lacks mechanisms to effectively balance religious freedom with constitutional rights as it only focuses on the application of *faraid*. There is a need for structural reforms, including the establishment of an independent Islamic legal advisory body similar to the MUIS, to oversee the fair application of Islamic inheritance laws.

5.3 Recommendations

5.3.1 Legal Reforms to Promote Gender Equality

Section 2(3) of the Law of Succession Act should be amended to ensure that the application of Islamic intestate succession law does not cause the override the discrimination against women based on gender and religion. This amendment should affirm that all intestate succession practices, including those grounded in Islamic law, must align with the constitutional guarantee of equality for all individuals, regardless of sex or faith.

Furthermore, there is a need to establish clearer and more consistent guidelines for the application of Article 24(4) of the Constitution. These guidelines should aim to prevent judicial inconsistencies and ensure that the right to equality is not unduly compromised under the guise of religious exemption. This would promote a more balanced and rights-based interpretation of religious freedom within the framework of Kenya's constitutional values.

5.3.2 Judicial and Institutional Reforms

An independent Islamic legal advisory body, similar to Singapore's Majlis Ugama Islam Singapura (MUIS), should be established to oversee the interpretation and implementation of Islamic intestate succession law in Kenya. This body would provide authoritative guidance on Islamic legal matters,

ensuring consistency and clarity in the application of intestate succession principles while remaining sensitive to the Kenyan legal and social context.

Additionally, the Kadhi Courts should be strengthened by integrating comprehensive legal training on constitutional law and human rights. This would ensure that their decisions are not only grounded in Islamic jurisprudence but also aligned with the broader constitutional framework of Kenya, thereby promoting justice and protecting the rights of all individuals involved.

5.3.3 Adoption of Alternative Inheritance Mechanisms

The use of Islamic estate planning instruments should be actively promoted to enhance financial security for vulnerable heirs, including Muslim and non-Muslim women. These tools can help ensure a more equitable distribution of wealth while remaining consistent with Islamic principles. Moreover, Muslims should be encouraged to prepare wills that comply with Islamic guidelines but simultaneously safeguard the rights of all dependents, regardless of gender or religion. This approach fosters both religious observance and social justice within the framework of Kenyan law.

5.3.4 Public Awareness and Legal Literacy

Educational programs should be conducted for the Muslim community to raise awareness of alternative inheritance mechanisms that promote fairness and inclusivity. These programs would empower individuals to make informed decisions that align with both Islamic values and the evolving social context.

In addition, training should be provided for legal practitioners, judicial officers, and religious leaders on how to effectively balance Islamic inheritance laws with constitutional principles of equality and non-discrimination. This training would help ensure that legal and religious interpretations uphold justice while respecting both religious doctrine and national legal standards.

5.3.5 Comparative Legal Studies and Reforms

Further research should be undertaken to examine how other countries with pluralistic legal systems have successfully integrated Islamic intestate succession laws with constitutional protections such as equality and non-discrimination. Such comparative studies would provide valuable insights and best practices that could inform the development of a more inclusive and coherent legal framework in Kenya.

Additionally, consideration should be given to implementing a structured intestate succession law framework that blends Islamic principles with statutory law. This approach would ensure that religious freedoms are respected while simultaneously upholding human rights standards, promoting a balanced and just legal system for all citizens.

5.4 Conclusion

This study has achieved all its objectives as set out in Chapter One. Firstly, the study successfully analysed the legal framework of Islamic intestate succession in Kenya, with a focus on higher court decisions. The findings from the court jurisprudence confirm that there is a legal conflict between Islamic law and constitutional provisions on equality. Additionally, the study examined Article 24(4) of the Constitution of Kenya and demonstrated that its application, particularly in inheritance matters, has resulted in discrimination against Muslim and non-Muslim women. Furthermore, by assessing the practices in Singapore, the study identified the best practices of Singapore in the application of Islamic intestate succession laws that take into consideration equality and non-discrimination which Kenya could adopt in its application of Islamic intestate succession laws. Finally, the study has proposed recommendations to reform Islamic inheritance laws to enhance gender equity and inclusivity, thereby addressing discriminatory practices within Kenya's legal framework.

This research has also confirmed that the hypothesis that Islamic intestate succession laws in Kenya inherently discriminates against women in intestate inheritance matters. Through its findings, it is evident that the legal analysis of appellate court decisions by higher courts has demonstrated that the application of Islamic intestate succession law has resulted in disparities based on gender and religion. Additionally, the study's examination of Article 24(4) of the Constitution of Kenya reveals that while it protects religious freedom, its implementation has allowed for judicial interpretations which prioritise Islamic intestate succession law over gender equality, reinforcing the marginalisation of women and non-Muslim heirs. By examining Singapore's best practices, this study further validates the hypothesis, as Singapore's model demonstrates how Islamic inheritance laws can be reformed to incorporate alternative distribution mechanisms while maintaining compliance with both Islamic principles and constitutional values.

Therefore, the study affirms that without reforms to the application of Islamic succession laws in Kenya, women will continue to face systemic discrimination in inheritance matters.



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