

**AN APPRAISAL OF ADMINISTRATION OF ESTATE OF DECEASED
MILITARY PERSONNEL UNDER THE NIGERIAN MILITARY LAW**

BY

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DECLARATION

I declare that the work in this Dissertation entitled An Appraisal of Administration of Estate of Deceased Military Personnel under the Nigerian Military Law has been carried out by me in the Department of Private Law. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this Dissertation was previously presented for another degree at this or any other Institution.

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CERTIFICATION

This dissertation entitled An Appraisal of Administration of Estate of Deceased Military Personnel under the Nigerian Military Law by Ahmed Muhammed ZANGI meets the regulations governing the award of the Degree of Master of Laws-LLM of Ahmadu Bello University, Zaria and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This work is dedicated to almighty Allah

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LIST OF ABBREVIATIONS

ALL FWLR	-	All Federation Weekly Law Report
CA	-	Court of Appeal
CF	-	Compare
CH	-	Chapter
CHD	-	Chancery Division
Et al	-	And Others
E.g	-	For Example
KB	-	Kings Bench
LL.M	-	Master of Laws
LFN	-	Laws of the Federation of Nigeria
LRCN	-	Law Report of Cases in Nigeria
NLR	-	Nigerian Law Report
NMLR	-	Nigerian Monthly Law Report
NOK	-	Next-of-Kin

NWLR	-	Nigerian Weekly Law Report
Op. cit	-	Opere Citato
SC	-	Supreme Court
Vol	-	Volume
V	-	Versus
WACA	-	West African Court of Appeal
WLR	-	Weekly Law Report

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ABSTRACT

*The Armed Forces Act (Cap A20) Laws of the federation of Nigeria 2004 is presently the Military Law regulating the Nigerian Armed Forces which consist of the Army, Airforce and Navy. The Act virtually embodied of testate and intestate procedures for the Administration of estate of deceased Military Personnel. This research basically examine the status and duties of Personal Representatives not appointed by a Will of Service Personnel but recognized under the Act (e.g Next-of-Kin or Claimants of Service Personnel). The research was conceived pursuant to misconception regarding the status and duties of Next-of-Kin/Personal Representative. This misconception was borne out from the Next-of-Kin appointment provisions under the Act. The provisions are to the effect that, **money or Personal Property of Deceased Personnel may be paid or delivered of Next-of-Kin or Claimants**. The Act was silent on what next the receivers of such estate will do after the delivery of the estate of him/her. This silence was the factor for the erroneous belief that a Personal Representative of a Deceased Personnel is the sole beneficiary of the estate of the deceased. Such believe was the cause of conflicts between appointed Next-of-Kin and the heirs of Deceased Personnel, which have resulted in series of petitions against of Next-of-Kins. Consequently, this dissertation aimed at examining the nature of Will under the Armed Forces Act and critically examine the status and duties of Personal Representatives under the testate and intestate succession. In this work, both doctrinal and empirical approach was adopted. The doctrinal research was achieved by the study of the Armed Forces Act, textbooks, Journals, correspondence and petitions from heirs of Deceased Service Personnel. The empirical approach was carried out through the preparation and distribution of questionnaire and analysis of data. The result showed that 45 out of the total of 100 respondents (52.9%) were of the view that Next-of-Kin is the sole beneficiary of the estate of Deceased Service Personnel. The work therefore recommended that, the status and duties of a Personnel Representative such as representing the deceased in all matters of the deceased entitlements and welfare of the deceased family, keeping a constant touch with the unit of the deceased on matters of the deceased family and briefing them accordingly, collecting any entitlements of the deceased Personnel when paid or delivered to him by the appropriate authority and presenting such entitlements to the family of the deceased or appropriate body or institution for onward distribution to the deceased heirs in accordance with the custom or tradition of the deceased Personnel, should be expressly stipulated to ambiguous circumstance on the status of Next-of-Kin.*

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background of the Study

Under the Nigerian Law, a Military Personnel is subject to two Laws (i.e) the Nigerian Military Law and Civil Law. Thus the administration of estate of deceased military personnel will be considered in this perspective. Generally, administration of an estate involves realising the moveable assets and paying out of them any debts and other claims against the estate. It also involves the division and distribution of what remains¹. Conversely, in this research, it involves the division and distribution of testate and intestate estate of deceased military personnel under the Nigerian Military law. The Armed Forces Act² is presently the major statute regulating the Nigerian Armed Forces.

Under the Civil Law, the laws governing the administration of the estates of deceased persons in Nigeria differ according to states, the applicable law depends on whether a state within the region concerned now has its own wills law and administration of estates law. Although some states have now enacted their own laws, notwithstanding these developments, it is pertinent to state that most of the states in Nigeria today still apply the pre 1900 English law with minor modifications.

¹Garner, B.A.,(2004) "*Black's Law Dictionary*." Thomson west, u.s, Eight Edition p. 46

² (Cap A20) Laws of the Federation 2004

Fundamentally, when a military personnel dies, two issues arise in relation to his property or estate depending on whether he died testate or intestate. A military personnel dies testate if at the time of his death, he has a valid will by which he disposed of his property. He dies intestate if he had no will at all, or if his will turns out to be invalid. In either case, the Armed Forces Act has provision for the administration and distribution of the estate of deceased military personnel however, where there is gap in the Armed Forces Act, the Administration of estate laws, Customary laws or Islamic law may apply as the case permits. Note generally that, the Administration of estate laws in Nigeria consist of the Administration of estate laws made by the various states in Nigeria, including the Customary laws of succession which are the various native laws and customs in Nigeria and Succession under the Islamic law which is hinged upon two pillars - the “*Mirath*” and the “*Wasiyyah*”. The *Mirath* covers the entire aspects of intestate succession under the Islamic Law and gravitates to lay a firm foundation for the procedure of *Wasiyyah* (i.e) the testate succession which allows the Muslims to devise of not more than one-third of their estate as testamentary gifts.³

The making of a Will under the Armed Forces Act is an optional Phenomenon. Where a Will is not made by a service personnel, the customary laws of succession of the tribe of the deceased personnel applies. Where the deceased is a Muslims, Islamic law applies. However, where a Will is made, the

³Abdulrashid, Y., &Okoh, S.E.E., (2011) *Succession under Islamic Law*, Malthouse Press Limited, Lagos P. 3

distribution of estate of the deceased is guided by the Will. Under the Armed Forces Act, a service personnel may wish to pass his proprietary rights such as death benefit, gratuity, allowances and any money he is entitled to, to his survivors and successor's in title by a Will. This is simply made by writing and signed or acknowledged by the maker in the presence of an officer of the forces or government medical officer.

The role of Personal Representative in testate and intestate succession is vital to the Administration of estate. It is on this note that, the research seeks to examine the appointments and duties of Executor of a Will and Administrators of intestate estates. The research will also critically examine the intricacies behind the appointments of Personal Representatives, such as: the appointment of brothers or uncles as Personal Representative/Next of Kin, the appointment of underaged persons as Personal Representative and so on.

1.2 Statement of the Research Problem

This research is conceived pursuant to the various misconceptions regarding the status and duties of persons whose names were registered as Next of Kin (NOK) of service Personnel and those who are considered as “claimants” of deceased service Personnel estate (who died without having NOK or has not made a will). This misconception was borne out from the wordings of sections 275 (3) and 277 (1) of the Armed Forces Act. The provisions are to the effect that, money or personal property of deceased personnel may be paid, or

delivered to such persons. The Act was silent on what next the receivers of such estate will do after the delivery of the estate, particularly, when the receivers may not be the executors of the deceased if he has made a will or may not even be part of the heirs of the deceased personnel; the receivers may not equally be the sole heirs of the deceased where a will was not made; hence, the need for the critical examination of such status and duties.

1.3 Aim and Objectives of the Research

The aim of this research is to examine testate and intestate succession under the Armed Forces Act. The objectives are as follows:

- a. To examine the Nature of a will under the Armed Forces Act.
- b. To critically examine the legal status and duties of Personal Representatives under the testate and intestate succession.
- c. To address the misconceptions regarding the status and duties of personal representative as sole beneficiary of deceased service personnel.
- d. To suggest administrative means of preventing conflict between the legal heirs of deceased personnel and NOKs/personal representative.

1.4 Justification of the Research

The basic issues under the Armed Forces Act regarding succession as it relates to Next of Kin/Personal representative whom the estate of a deceased Personnel will be delivered to, upon the demise of the Service Personnel, was that, the status and duties of such Personal representative were not expressly stipulated under the Armed Forces Act. (The Act was silent on the status and what duties expected of a Personal representative when such estate is delivered to him/her). These shortcomings in many instances caused the erroneous believe that a Personal representative of a deceased service Personnel is the sole beneficiary of the estate of the deceased. Such erroneous believe was the cause of conflicts between the NOKs and the heirs of deceased Personnel. These conflicts have resulted in series of petitions by the family members of deceased personnel against NOK/Personal Representatives. For instance, few among those conflicts recorded in 2017 include the following; firstly, the petition of Mrs Ladi John Gambo, wife of late 79NA/13433 Warrant Officer John Gambo forwarded on the 4th June 2017 to the Chief of Army staff against Mr. Lucky John (NOK) and brother of the late Warrant Officer whom was paid the sum of ₦7,811,752.62 but never shared same to the heirs of the late Warrant Officer. Secondly is the petition of Miss Halimatu Ibrahim Ubale, daughter of 79NA/21562 Warrant Officer Ibrahim Ubale forwarded on the 22 February 2017 to the Commander 81 Military Intelligence Brigade against Mr. Hussaini

Abdullahi (NOK) of her late father who collected the burial expenses ₦500,000 and 3 months' salary ₦300,000 but assumed the ownership of same. Thirdly, is the petition of Aisha Olabode Isiaka wife of late 05NA/56/917L/CPL Olabode Paul Osinlu forwarded on the 15 May 2017 to Army Headquarters Department of Army Administration against the first wife of the late soldier and the NOK as well, who allegedly denied the petitioner and her daughter the entitlements of the late soldier, simply because she is the NOK. It is in view of these and other several cases, that this study is necessitated.

1.5 Scope of the Research

The scope of this proposed research will be limited to Administration of Estate under the Armed Forces Act. In this regard, testate and intestate succession under the Armed Forces Act will be discussed. Under these key subjects, the status and duties of executors under a will and administrators under an intestate succession will be considered. Subsequently, the research will examine the relevancy of a Grant of Representation and letters of Administration to Personal Representatives under the Armed Forces Act.

1.6 Research Methodology

The methodology to be adopted in this research work is mostly doctrinal. Reliance will be made on the Armed Forces Act, textbooks, journals, case law and other relevant materials. Questionnaires will also be used/issued to some

Personnel, dependant of the deceased personnel who were affected and Deputy Directors Legal Services at Division level where cases or conflicts involving distribution of Deceased Service Personnel property are being handled.

1.7 Literature Review

Administration of Estate Law under the Nigerian laws is not new to writers and scholars in Nigeria. It has been exhaustively discussed by writers though, in relation to administration of estate under the Armed Force Act, very few writers considered the subject. The few available books, articles and publications in journals were reviewed hereunder.

Chiefe, T.E.C., in his Book⁴ examined the nature of will under the Armed Forces Act, procedure for appointing Next of Kin as stipulated under Section 275 of the Armed Forces Act, procedures for intestate succession as stipulated under the Armed Force Act. The book also discussed debts of a deceased personnel. While acknowledging the fact that the issues examined or discussed in the book are relevant and useful to this proposed research, however, the book laid emphasis on nature of will and the procedure of intestates succession under the Armed Force Act without taking cognizance to the relativity of “Grant of Representation” and “letter of Administration” to Personal Representatives under the Armed Forces Act, the duties of executors under a will, vis-á-vis the duties of next of Kin and claimants of estate of an instestate deceased personnel

⁴Chiefe, T.E.C., (2008) “*Military Law in Nigeria under Democratic Rule*” DiametricsNig Ltd, Abuja pp 385-404

under the Armed Forces Act. These key issues ought to be addressed as they were considered as the presumed factors bedeviling the misconceptions in succession under the Armed Forces Act.

Abayomi, K. in his book⁵ discussed generally wills, types, advantages of making a will, its nature, execution, testamentary capacity, duties of Personal representative under a Will and so on. The book is very relevant and useful to this research in that, it addressed the general rules and procedure regarding testate and intestate succession. However, the book did not take cognizance of the peculiarities of rules regarding testate and intestate succession under the Armed Forces Act.

Imhanobe, S.O. in his Book,⁶ discussed wills, codicil and probate practice. The book is relevant to this research in that it examined the definition and characteristics of a Will, it also discussed the testamentary capacity and formal validity of a will to mention but few. However, the book did not cover other areas relating to wills such as, the status of personal representatives under a will, the functions, duties and powers of personal representatives under a will. The book also did not cover the intestate succession procedures as contained under the Armed Forces Act.

⁵Abayomi, K., (2004) *“Wills: Law and Practice”*. Mbeyi & Associates (NIG) Ltd, Lagos (2004), p.10

⁶Imhanobe, S.O., (2010) *Legal Drafting and Conveyancing* (with precedents) Temple legal consult, Abuja part 4

Nwogugu, E.I. in his book,⁷ examined in great length succession under the General Law (Received English Law) and the local statutes. He categorized testate and intestate succession under the received English Law and further expatiated on the applicable laws, nature and formal requirement of will and also discussed on the capacity to make a will. He further examined the applicability of intestate succession in some state in the South, East and Northern States of Nigeria. The book also dealt with succession under customary law and specifically considered Nuncupative wills, written wills and Moslem wills vis-à-vis customary intestate succession as applicable in Lagos, Western states, Ibo system, Benin system, Ijaw system and the system in the Northern states. While considering the book as very relevant to this area of study, the writer did not take cognizance of the testate and intestate succession peculiarities as contained in the Armed Forces Act.

Abdurashid, Y. and Okoh, S.E.E. in their book,⁸ examined generally the definition of succession under Islamic Law, the significance of the mirath, the mirath (intestacy), rules governing mirath, classification of heirs and so on. Their book on this area is very adept and thoroughly proficient. The book is relevant and useful to the proposed research in that, it address the problem of distribution of property of a (Moslem) service personnel who died intestate.

⁷Nwogugu, E.J., (2001) *Family Law in Nigeria*(Revised Edition) Heinemann Educational Books (Nigeria) Plc

⁸Abdulrashid, Y. and Okoh, S.E.E., (2011) *Succession under Islamic Law*; Malthouse press Limited, Lagos.

Gurin, A.M., in his book,⁹ examined the Nature of Islamic Law of succession, importance of succession in Islamic, the inheritable property, grounds of inheritance, conditions of inheritance, impediments to inheritance, distribution of estate and so on. This will no doubt assist the research on matters of succession or distribution of estate under the Islamic Law.

Pindiga, U.E., in his book,¹⁰ extensively discussed ‘mirath’ under the Islamic Law. The context of ‘mirath’ may be applicable on intestate succession under the Armed Forces Act, where a deceased service personnel is a Muslim. Hence, the book is relevant and useful to the proposed research in that, it will address the shares of other heirs of a deceased Personnel who are not declared as Next of Kin (NOK) while in service.

Adaka, F. C., in his Article¹¹ also discussed the making of a Will under the Nigeria military law, the appointment of Next of Kin by a Service Personnel upon enlistment into the Nigerian Army, Distribution of estate of Service Personnel who die intestate, debts owned by a Deceased but, do not extend his examination to critical issues such as the right of heirs of deceased Service Personnel in the case where a deceased died intestate. The article did not also cover the legal status, duties of Next of Kin and claimant(s) of the estate of a

⁹Gurin, A.M, (1998) *An Introduction to Islamic Law of Succession*Jodda Press Ltd, Zaria

¹⁰Pindiga, U.E., (2001) *succession (mirath) in the Shaira*. Tamazaublishing co. ltd, Zaria.

¹¹Adaka F.C. (2005) *Wills and Distribution of Property of Deceased Service Personnel Under Nigeria Military Law*. In the *Military Lawyer*. (ed.) *A Professional Publication of the Directorate of Army Legal Services*. Vol: 1 (June 2005) pages 28-35.

deceased personnel. It is in this light that the proposed research seeks to improve upon the literature by appraising it in a much wider perspective.

1.8 Organisational Layout

This study is basically on Administration of estate of a deceased military personnel under the Nigerian Military law. The study is organized as follows:

Chapter one is the introductory chapter that form the basis of this research work. It introduces the research work, states the problem, outlines the significance of the research, states the aims and objective of the research, defines the scope of the research, states the methodology to be adopted in conducting the research, and reviews the available literatures in the field.

Chapter two examines Wills generally and Wills under the Armed Forces Act. It outlines the formal requirements of a Will under the Armed Forces Act and discusses other issues involved in making a Will; such as: Testamentary Power, Mental Capacity, Appointment of Executors, Revocation of a Will and Functions of Codicils.

Chapter three discusses the nature of intestate succession under the Armed Forces Act, it equally examines the procedures of payment of debts of Deceased Service Personnel, Distribution subject to rights of Creditors and the Constitution of a Fund by an undisposed money belonging to Deceased Personnel. The chapter briefly juxtapose the Armed Forces Act and succession

under Customary Law and finally, the chapter analyzes and interprets Data on the perception of some members of the Armed Forces on the status of NOK/Personal representative.

Chapter four deals with Administration of estates of deceased military personnel under the Armed Forces Act. Under this, the status and duties of personal representatives under the testate and intestate succession will be generally discuss. The appointment of NOK/Personal representative, legal issues on such appointment vis-avis duties of Personal representative and claimants under the Act will also be discussed. Subsequently, the chapter will also determines the heirs of a deceased personnel and modes of distribution of an intestate estate under the Act. Thereafter NOK relativity with “Grant of Representation” and Letters of Administration including the Jurisdiction of Sharia and Customary Courts on succession matters shall also be examined.

Chapter five summaries the research work, outlines the major findings and makes some recommendations.

CHAPTER TWO

TESTATE SUCCESSION UNDER THE NIGERIAN MILITARY LAW

2.1 Introduction

There are two ways of succession under the Armed Force Act (Cap A20) LFN 2004. One of such ways is the testate succession which is an optional instrument a testator may adopt during his life time. The provisions regarding testate succession is virtually similar to that of the English Law of general application except with minor changes. However, it should be noted that since a service personnel is subject to both laws, it follows that where the Armed Forces Act is silent, the Laws of general application applies. In spite of this, it is pertinent to understand the term succession before delving into the subject.

Succession has been defined as “the acquisition of rights or property by inheritance under the laws of descent and distribution.”¹² Osborn Concise Law Dictionary described the word succession thus: where property passes on the death of a corporation sole to his successor.¹³ The word ‘testate’ on the other hand was simply defined as “the passing of rights or property by will”¹⁴. Under the Armed Forces Act particularly section 276 (1), a service personnel may wish to pass his proprietary rights such as death benefit, gratuity, allowances

¹² Garner, B.A.,(2004) ‘*Black’s Law Dictionary*’. Thomson west, U.S, Eight Edition p.1472

¹³ Osborn, P.G.,(1964) ‘*A Concise Law Dictionary*’, London Sweet & Maxwell, fifth Edition P. 305

¹⁴ Garner, op. cit. p.1472

and any money entitled, to his survivors and successor's in title by a Will. Then, what is a Will?

2.2 Definition of a Will

A Will is the expression by a person of wishes he intends to take effect only at his death. Unlike a disposition of property by deed which operates at once, a will speaks from death and remains revocable by the testator during his life time.¹⁵ A Will was also defined as “the declaration in a prescribed manner of the intention of the person making it with regard to matters which he wishes to take effect on or after his death.”¹⁶ A Will was equally described as “a testamentary and revocable document, voluntarily made, executed and witnessed according to law by a testator with sound disposing mind wherein he disposes of his property subject to any limitation imposed by law and wherein he gives such other directives as he may deem fit to his personal representatives otherwise known as his executors, who administer his estate in accordance with the wishes manifested in the will”.¹⁷

Notably, a will is a creation of statute. For it to be valid; it must comply strictly with the provisions of the relevant statute. Having said that, now lets look at the nature of will under the Armed Forces Act.

¹⁵Adubi, C.O., (1995)‘*Drafting, Conveyances & Wills*’.The light house publishing co. Ltd., Lagos, P. 107

¹⁶ Halsbury's Laws of England (4th edition) vol. 50 para 301, p. 203

¹⁷Abayomi, K., (2004)‘*Law and Practice*’, Mbeyi& Associates (Nig) Ltd, Lagos p.6

2.3 Nature of a Will under the Armed Forces Act

The Armed Forces Act have a special provision for making a will.¹⁸ The provision is synonymous to the wills Act 1837 but distinct in some aspect. This will be seen below. However, generally, a will speaks from death. It is ambulatory or testamentary. One of the important distinguishing features of a will is that it is of no effect until the death of the testator. This is also the case under the Armed Forces Act. Until the testator's death, the will is revocable and the testator is free as many times over as he wishes to alter, amend or even cancel it by destruction. The will is a mere declaration of his intentions. Similarly, no beneficiary can take any interest in any property disposed by will until the death of the testator. No beneficiary will take any interest under the will, unless he is alive at the testator's death¹⁹. A will can be revoked at any time²⁰. A will must be in writing under the Armed Forces Act²¹. This requirement is a statutory one. It means that any will made under the Act which is not in writing is invalid. However, under the Wills Law 1958 of the Western Nigeria, it appeared that members of the Forces in actual military service and mariners at sea need not comply with the requirement of writing. Hence, wills emanating from all the states (then) constituting the old Western Region need not be in writing by virtue of Section 9(2) of the Wills Law 1958 of Western

¹⁸ Section 276 (1) of the Armed Forces Act.

¹⁹ Abayomi, op. cit. p.36

²⁰ Ibid p 40

²¹ Section 276 (1) of the Armed Forces Act

Region. Nonetheless, since the Armed Forces Act and, perhaps, Marine matters are within the exclusive list, it would seem that the Wills of Armed Forces personnel must be in writing.

2.4 Formal Requirements of a Will under the Armed Forces Act

Generally, the formal requirements of a Will under the wills Act 1837 which is a statute generally applicable to also members of the Armed Forces as Nigerian citizens includes the following requirements:

- a. A Will must be in writing.²²
- b. It must be signed by the testator.²³
- c. The signature of the testator must be in the presence of two or more witnesses who must be present at the same time and who subsequently attest to the Will.²⁴
- d. The witness to a Will must attest to it in the presence of the testator.²⁵

However, it is pertinent to note that, the Armed Forces Act have special provisions distinct from the above requirements. For better analysis of this special circumstance, the provision reads thus:

²² Wills Act 1837, Section 9.

²³ Ibid, Section 9.

²⁴ Ibid, Section 6.

²⁵ Ibid.

A Will made by a person subject to service law under this Act shall be valid for disposing of any money or personal property which is due or belongs to him at his demise if it is in writing and signed or acknowledged by him in the presence of, and in his presence attested by one witness, being an officer of the forces or any government medical officer.²⁶

A cursory look at the provisions of the Act seems to outline the following formal requirements of a valid Will under the Armed Forces Act:

- a. It must be in writing
- b. It must be signed or acknowledge by the testator.
- c. The signature of the testator must be in the presence of one witness who must be an officer of the forces or any government medical officer.
- d. The witness must attest to it in the presence of the testator.

From the above two statutes, it can be seen that while the Wills Act 1837 required the minimum of two persons to attest to a Will, the Armed Forces Act only required one person and the person so require must be an officer of the forces or government medical officer. The reason behind this is not farfetched from the fact that, a Will under the Armed Forces takes into consideration the exigency of military service where servicemen can be called out at a very short notice to go for a military operation, that may cause the end of their lives.

²⁶ Armed Forces Act, Section 276 (1)

Adhering to the formality of drafting a will under the 1837 Act may preclude the intention of a testator who wishes to make a will in such an emergency circumstance.

2.5 Testamentary Power under the Armed Forces Act

It can be deduced from the wordings of section 276 (1) of the Armed Forces Act that members of the armed forces desirous of making a will have absolute freedom to dispose of all of their property in any manner they wished. This can be buttressed from the following clause in the above quoted provision:

A Will made by a person subject to service law under this Act shall be valid for disposing of any money or personal property which is due or belongs to him....

The use of the wordings “any money or personal property which is due to him or belongs to him seems to empower the testator to dispose all his entitlement to any person he wishes (including his dogs) living his immediate family in hardship. This notwithstanding, it pertinent to note that, there was no provision under the armed Forces Act restricting the testamentary freedom of a service personnel however, as noted earlier, that a service personnel is subject to two laws (i.e.) military and civil laws. Where there is gap in the military law, the civil law compliments by filling the gap appropriately in accordance with the existing laws applicable to the circumstance of the testator. Hence, it follows that, where a will of deceased military personnel is detected or made as a result

of wrong pressures or influences which disinherit all his dependents and relations in favour of strangers, Islamic laws may be resorted to, if the deceased is a Muslim or other Nigerian statutes that restricted the testamentary freedom of a testator. Examples of such statutes restricting testamentary freedom include the Wills Laws of Lagos and Oyo States. Thus section 2 of the Wills Law, Lagos State²⁷, provides:

Notwithstanding the provisions of section 1 of this law, where a person dies and is survived by any of the following persons

- (a) The wife or wives or husband of the deceased; and
- (b) A child or children of the deceased

That person of those persons may apply to the court for an order on the ground that disposition of the deceased estate effected by his will is not such as to make reasonable financial provision for the applicant.

Thus by this provision a spouse or child of the testator who has been left out in the Will, or whose legacies are considered by him or her inadequate, can apply to court to vary the Will in order to increase such legacy or provide such a legacy in the case of some who has been left out completely.

²⁷Cap 194 1994 Law of Lagos State.

The Wills Edict of Oyo State (1990), not only limits the right of a testator to dispose of property which he is precluded from disposing of under customary Law, (as is the case under Wills Laws of all states created from the former Western Region) but also provides that it shall not apply to the Will of a person who immediately before his death, was subject to Islamic Law²⁸. This means in effect that, all restrictions imposed by Islamic Law on the right of a Muslim to freely dispose of his estate by will, now apply to Muslims domiciled in Oyo State²⁹. In practice, this means that such a testator has very little freedom of testamentary power, since Islamic Law has comprehensive and fixed provisions for the disposal of a deceased's estate³⁰.

2.6 Mental capacity and other vitiating Elements

As noted in the preceding subject that members of the Nigerian Armed forces are also subject to civil law, it follows therefore that other ancillary requirements of a valid Will which were not expressly mentioned under the Armed Force Act also applies to a Will under the Armed Forces Act hence, before a member of the Armed Forces will be capable to make a Will he must have the necessary capacity to do so. The moral character of service personnel actions are not relevant. It is their capacity to comprehend their acts that count. For instance, mental capacity of a testator was determined by the Supreme

²⁸Sagay, 1., (2012) *'Nigeria Law of Succession'*, Malthouse Press Limited p. 131

²⁹ Ibid

³⁰ Ibid

Court in *Okesola v. Boyle*.³¹ In that case, the testator who had earlier made a will in 1972, was admitted into hospital suffering from stroke, and paralysis of the right side of his body in February 1976. He was discharged three weeks later, still incapacitated. Five days after the discharge, he purportedly made another will, leaving his entire property to a non-relation with whom he did not have close dealings, but who paid his bills whilst on admission in hospital. In the earlier will, the sole beneficiary had been the testator's cousin, who was also his caretaker. The latter challenged the validity of this Will. Upholding the trial Court's decision that the evidence did not establish that the testator was mentally fit to make the second will in 1976, the Supreme Court added that:

Viewed against the back ground that the testator suffered a stroke on 23/1/76 affecting his brain and was admitted into LUTH; he was discharged on 19/2/76; he suffered paralysis to his right leg and arm, could it be said that D.W. 4 was speaking the truth about the physical health of the testator? The learned trial Judge, after an exhaustive examination of the facts discerned from the evidence before him, including Exh. D.1, was unable to rely on the evidence of D.W.4. I can find no justification for holding to the contrary.

2.6.1 Undue influence

For a will to be declared invalid for undue influence, there must be pressure amounting to coercion. The will of the testator must have been overcome by the

³¹(1998)² NWLR (pt 539), p.533

will of the other person, that he (the testator) must have been carrying out the other person's will rather than his own. Mere influence resulting from association, without the element of substituted will does not amount to undue influence in this respect³². In the *Administrator-General v. Oladipo Ajana Johnson and Anor*,³³ one of the grounds on which the defendants attacked the will was that it had been procured by the undue influence of the Martha Aina, a female companion of the testator who received a bequest under the will. The defendants wanted the court to presume undue influence on the basis of their allegation that on account of her close relationship with the testator, the latter became estranged from his own relations. Rejecting this claim the court held as follows:

In my view the facts of this case do not warrant an inference of undue influence. A man may decide or may even be persuaded to disinherit all the members of his family and choose as the object of his dispositions a mistress or anyone else who to him deserves to be so benefited. That by itself would not raise an inference of undue influence and the law will not presume that undue influence has been proved when all on record is that a mistress was nearby and that the will could have been procured as a result of her dictation. In order to amount to undue influence the testator must do that which otherwise he would not do, and the influence of the other party over him must be so dominating as to make him do what he does not wish if free, to do. I cannot find such evidence in this case and I hold therefore that his plea of undue influence fails.

³² See *Wingrove v. Wingrove* (1885) 11 P.D. 81, at p.82 (per Sir James Hannen)

³³ (1960) LLR 290

2.7 Appointment, Number and Duties of Executors

An executor is the name given to a personal representative of the testator, chosen by him in his will. However, as noted earlier, under the Armed Forces Act, service personnel, upon enlistment, are mandated to declare the name of persons who may be their personal representatives in the case of death. It is pertinent to note at this juncture that such persons are not executors within the context of a Will under the Armed Forces Act. By subsection (2) of Section 276 of the Armed Forces Act only the names of persons mentioned in the service personnel Will shall exclusively be deemed the testator's representative with respect to the money or personal property of the deceased military personnel.

It should also be noted that, the persons whose names were declared upon enlistment as personal representatives could also be considered as executors of the deceased military personnel, if their names were repeatedly mentioned as such in the Will of the deceased military personnel. In spite of this, the most relevant considerations, a service personnel desirous of appointing an executor ought to take cognizance of, are: Competence of the executors, Availability of the executors, the need to appoint an executor, and likelihood of Accepting executorship. These shall be explained hereunder³⁴:

³⁴ See also Abayomi, op.cit. p. 131

2.7.1 Competence of the Executors

It is necessary to match the ability of the executor with the volume and quality of the job he has to perform in the administration and the execution of the will. It is sheer folly to ask someone with low intelligence and capability to administer a complex and complicated Will. With simple Will, a person with average ability will suffice. But a will with complex provisions and trusts may require more than a simple mind. This is not to be construed to mean that an executor needs to be an expert to qualify for the job. Where executors require expert and specialist advice on matters relating to the will, they are at liberty to hire the required expertise which they can pay for from the estate. Executor(s) must however know when to seek professional and expert advice. Because it may require the knowledge of an accountant to prepare a complex inventory of all that the testator left behind; and bankers to advise on the placements in the banks and in other financial institutions. A stockbroker may advise on the stocks and shares to invest in.

2.7.2 Availability of the Executor

It has to be ascertained that those likely to be appointed are available. Available in the sense that they are residing within the location of the estate. Executors who do not reside within the geographical area where most of the estate is situated or located may have a problem in determining the estate. This

is more compounded if they live abroad. Notwithstanding the relationship or closeness of an executor to the testator, the testator ought to be informed on the problems likely to be encountered. For instance, if the fortune of the testator is in Lagos and environs, and his dependants living in Sokoto and Kano to see to the details of the administration of the estate in the manner expected of their offices. Definitely problems may be encountered immediately upon the demise of the testator when the executors are expected to be in Lagos to see to the application leading to the grant of probate. Gathering the assets, settling debtors, claiming from creditors, ascertaining the beneficiaries and distributing the estate may require the personal attention of the executors. Distance may hinder the smooth running of their work as a team. Sometimes out of sheer sentiment including affection a testator may wish to appoint a child or other relation living abroad as one of his executors. Such a nomination should be given serious thoughts in spite of what has been stated above on distance and age of the child.

2.7.3 The need to Appoint an Executor

Precisely, wealth and affluence have these days adversely affected family relations. Brothers are no longer each other's keepers and there is so much stress that everyone looks out for himself without caring for the overall good of the family. The expectation of the testator's bounty leads to unnecessary feuds, jealousy and unmatched rivalry between kinsmen hence, the need to prevent this

and to ensure that amongst the warring dependants the chosen beneficiaries get what is meant for them and those excluded do not by any subterfuge get anything-presupposes the need for appointment of an executor who will eventually administer the property of the testator according to his wishes (upon the testator's demise) by carrying into effect the provisions of the Will relating to the distribution of the testator's property. The duties of an executor may include: to bury the deceased; to prove the Will; to collect the estate; to pay the debts in their proper order; to pay the legacies, and distribute the residue among the persons entitled; And so on. Details of this will be discussed subsequently.

2.7.4 Likelihood of Accepting Executorships

An executor may be competent and available but may not wish to act. How does one ensure that the person chosen is likely to accept to act? There is no hard and fast rule about acceptance. The testator may make discreet enquiries directly from the proposed executor who may confirm to the testator that if appointed he would be willing to act. Such a promise does not preclude him later upon the demise of the testator from renouncing the position or otherwise refusing to act. Based on the close relationship the testator has with him, the proposed executor may invariably agree out of sheer respect to the testator to act. This means that the testator should only appoint persons he believes would want to accept and act in the office to which the testator has appointed him.

2.7.5 Number of Executors

Under the Armed Forces Act, there is no specific provision restricting a testator who seek to appoint as many executors as possible in his wills however, the law is that probate or letters of administration shall not be granted to more than four persons in respect of the same property³⁵. If there is a minority (i.e beneficiaries having fewer interest in the will) or life interest in the Will or arising there-from, probate or letters of administration shall be granted either to a trust corporation with or without an individual, or to not less than two individuals³⁶. The court is free to act on such prima facie evidence available to it to determine whether there is a minority or life interest arising from the will³⁷. If there is only one personal representative (not being a trust corporation) then, such existing minority beneficiaries or a beneficiary may apply and until the estate is fully administered the court may on the application of any person interested or of the guardian, committee or receiver of any such person, appoint one or more personal representatives in addition to the original personal representative in accordance with probate rules and orders³⁸.

³⁵ See Section 24(1) of Administration of Estate Law Cap A3 Laws of Lagos State, 2003 which is equivalent to Section 160 of the Supreme Court of Judicature(consolidated Act) 1925.

³⁶ Ibid

³⁷ Ibid

³⁸ Ibid Section 24(2)

The number of executors that could be appointed was discussed *In The Estate of Holland*³⁹. A testator by his Will appointed four persons as executors and trustees of his will and after certain bequests, appointed a fifth person, literate executor in respect of certain papers. The usual executors' oath was sworn by the four general executors for the purpose of a grant to them of the estate save and except the paper on which the fifth person was appointed literate executor. The oath was refused by the Registrar on the grounds that by virtue of the Supreme Court of Judicature (Consolidated Act) 1925 one of the five executors must renounce. The executors applied to the court asking that the oath must be received. Held as the oaths asked in effect for grants to five executors it contravened S.160 of the Supreme Court of Judicature (Consolidated Act) 1925 and ought not to be received.

2.7.6 Power/duties of Executors

In almost every state of the Federation, there is in operation an administration of Estate Law which prescribes the duties, rights and obligations of personal representatives. The will which names and appoints executors prescribes also what the testator wants his executors to do with regard to the administration of his estate. It is the sum total of the two instruments that map out the perimeter of the powers of an executor. An executor derives authority to

³⁹(1936) All E.R. 13.

act from the will⁴⁰. The court confirms this by the Grant of probate⁴¹. Accordingly, the estate vests on the executor immediately upon the demise of the testator and so are all interests therein. The executor takes over immediately the testator dies. He can enter into the property of the testator. Take inventory, carry out valuation, provide security and also do acts and things which a prudent man will do to preserve and secure his own belongings. He can probably start an action on behalf of the estate but the court will not make any pronouncement until the probate is exhibited. In other words the court will not allow him to prove his title as executor otherwise than by the production of a grant of probate⁴².

2.7.7 Duties

The following among others consist of duties of executors:

a. Applying for the Grant of Probate

It is one of the duties of the executors to apply to the high court for the grant of probate. As soon as the testator dies the executors should approach the probate Registrar to enquire whether the deceased's Will was lodged there.

b. Inventory and Account

The law requires a personal representative to exhibit inventory and accounts of the estate under oath whenever he is lawfully required to do by the

⁴⁰Abayomi, op.cit. p. 136

⁴¹*National Trust Co. v. Mendelson*(1942) 1 D.L.R. 438

⁴²Abayomi, op.cit p. 136

court⁴³. Upon taking probate an executor and an administrator on taking out letters of administration takes an oath that inter alia he will exhibit a true and perfect inventory of the deceased's estate devolving upon him and render a just and true account hereof whenever required by law so to do⁴⁴. A personal representative may be compelled at the instance of a beneficiary or a creditor to exhibit an inventory. If the court finds upon investigation that the account is true and perfect, it will vouch for it⁴⁵. In the case of *Onayemi v. Okunubi*⁴⁶ the executors did not render any accounts for over ten years after the grant of probate. The plaintiffs asked the executors to file accounts. The trial judge said that the executors were guilty of "gross dereliction of one of their most important duties" because they never filed accounts. The executors argued that there was no obligation on them to file accounts. That they could only file accounts in the manner prescribed by law. Bairamian JSC delivering the judgment of the Supreme Court held that an executor has a duty to keep clear and distinct accounts of the property which he is bound to administer especially where the interests of minors are involved.

⁴³ See Section 14 Administration of Estates Law Cap A3 of Lagos State, 2003.

⁴⁴ Abayomi, op.cit p. 139

⁴⁵ Ibid

⁴⁶ (1965) 1 All NLR 362.

c. Gathering the Assets

Allied to exhibiting inventory is the location and the gathering of the deceased's real and personal property. It is the duty of the executor to find and gather all assets. Real property should be located including all documents relating thereto. If the documents cannot be located at home or in the office, enquiries should be made at the banks.

d. Suing and being Sued

The executors can sue and be sued. All causes of action subsisting against or vested in the deceased shall survive against or for the benefit of his estate except causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claims for damages on the grounds of adultery⁴⁷.

e. Right of Distress

The executors may distrain upon land for arrears of rents due or accruing to the deceased in like manner as the deceased might have done had he been living⁴⁸.

⁴⁷ See Section 15(1) AEL op.cit.

⁴⁸ See Section 16 AEL op.cit

2.8 Revocation and Alteration of a Will

There are three main ways by which a Will may be revoked. It may be revoked by a subsequent Will or Codicil or any other instrument in writing; by marriage and by destruction with intent. The three ways shall be examined as follows:

- a. Subsequent Will or Codicil. Another will or codicil may expressly or impliedly revoke an earlier will.
 - i. Express Revocation

A subsequent Will or Codicil can expressly revoke an earlier will. Usually this can be done by inserting an appropriate revocation clause in the later will. Words usually used to denote a Will as being the last and only Will may not by themselves revoke earlier Wills. The intention to revoke must be obvious from the text of the will before such words could be held to revoke previous wills.

- ii. Implied Revocation

Even without an express revocation clause; a later will will revoke an earlier one if the later will covers practically the same ground as the earlier one. In this case it is implied that the later one takes the place of the earlier Will and probate will be given to the later will.

iii. Codicils

A codicil is a miniature will. It can be used to revoke a will. Details of its description and functions will be discussed subsequently. However, when a codicil is to be used for revocation of a will care must be taken in deciding the effect of the revocation of earlier testamentary instruments by a later codicil. Supposing a Codicil is used to revoke an earlier Will, are intermediate Codicils to the Will ipso facto revoked as well? It has been suggested that this becomes a matter of construction. That if the revoking codicil distinguishes between the will and subsequent Codicils as for example, by date, the subsequent codicils may not be revoked⁴⁹.

b. Other Instruments of Revocation

Apart from revocation by subsequent Will or Codicil, a Will or Codicil may be revoked by writing expressing the intention to revoke earlier testamentary instruments. For such writing to be valid as an instrument of revocation, it must comply with all the requirements for making a valid Will. The testator must be of sound mind, not subject to the undue influence of any third party and the writing must be executed in like manner as a Will. Accordingly a revoking Codicil,

⁴⁹Abayomi, op.cit. p. 181

memorandum of revocation, a letter, a settlement or an ordinary declaration of intention to revoke must satisfy these requirements before they can effectively revoke an earlier Will or other testamentary documents⁵⁰.

c. By Marriage

In all the States of the Federation marriage revokes a Will. However, because of the difference in applicable statutes, there are differences here and there about the extent of revocation occasioned by marriage⁵¹.

d. By Destruction with Intent

The law on revocation by destruction with intent is uniform throughout the states of the Federation⁵². “Burning, tearing or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking same.”⁵³

From the above, two things are required to revoke a will under this heading-physical destruction and the intent to revoke the will. The two things must be contemporaneous. (i.e The physical destruction without

⁵⁰. Ibid

⁵¹. Ibid p. 182

⁵². Ibid p. 186

⁵³. Ibid

the intent does not revoke the will so also the intent without the physical destruction⁵⁴).

2.8.1 Alterations

The same way we alter or amend letters before we finally sign same, so also do testators alter, interlineate or obliterate their wills before they proceed with the process of execution. Sometimes, even after executing and as an afterthought, a testator may decide to cancel, substitute, alter or amend one or the other of the provisions in his Will. There is nothing terribly wrong in altering or otherwise amending one's Will. But this is better done by way of a Codicil. It may however not be ideal to reflect these alterations in a Codicil. The alterations might be inconsequential, there might not be sufficient legal advice on how to harmonise or properly effect the alterations within the law⁵⁵.

2.9 Functions of Codicils

2.9.1 Codicils

A Codicil is a miniature will. It is so described because like a Will it must comply with all the legal requirements necessary to make a Will legal and effective. It must, for instance, be revocable and testamentary. It must be executed according to law; the testator executing a Codicil must have knowledge and understanding and he must be independent and not subject to the

⁵⁴. Ibid

⁵⁵. Ibid p. 201

undue influence of anyone. Also, the doctrine of lapse and ademption applies to Wills as it applies to Codicils.

2.9.2 Functions

A Codicil may be used to effect inter alia the following:⁵⁶

- (i) Appointing an executor and trustee in substitution for an executor and trustee who has died; revocation of a gift of one-fifth share of residue to a son where such son died without Children and the gift of such share or residue to other children of the testator.
- (ii) Revoking settlement of a one-third share of testator's residuary estate on his sister and giving such one-third share to a niece on the same trusts, by reference.
- (iii) Giving a gift or an advance to a child.
- (iv) Making a Codicil on the occasion of the testator's second marriage, reviving his Will, substituting the name of his second wife for that of his first and including any children by his second wife in the gift of the residue contained in his will.
- (v) Correcting a clerical error in a Will.
- (vi) Rendering valid alterations made in a Will.
- (vii) Republishing a faulty Will.

⁵⁶. Ibid p. 211 - 212

2.10 Conclusion

This chapter examined generally testate succession under the Armed Forces Act. It outlined the requirements of a will under the Armed Forces Act and also elucidate on the necessity or exigency of the requirement of one witness attesting to the signature of a testator. The chapter subsequently discussed the testamentary power and mental capacity of a testator under the Armed Forces Act and further examined the appointment and duties of Executors vis-à-vis Revocation of a will, alteration of a will and lastly functions of a codicil.

CHAPTER THREE

INTESTATE SUCCESSION UNDER THE NIGERIAN MILITARY LAW

3.1 Introduction

Basically, the Nigerian Military which consist of the Army, Airforce and Navy are regulated or bound by the Armed Forces Act (Cap A20) Laws of the Federation of Nigeria 2004. Apart from the subsidiary Regulations, all reference to Military Law are made under the Armed Forces Act hence, this chapter will discuss Intestate succession as envisaged by the Armed Forces Act. The Armed Forces Act has developed a fairly system of rules and regulations concerning the distribution of property of Deceased Service personnel who died Intestate.

The rules took cognizance of the ethnic, cultural and religious sensibilities of Service personnel. However, it must be pointed out at this juncture, that the rules and regulations are applied only to persons subject to Service law hence, the estate of retired or discharged Officers are not covered by the regulations.

3.2 The Nature of Intestate Succession under the Armed Forces Act

Generally, intestate succession under the Armed Forces Act can be seen in two circumstances. The first instance is where a **Next-of-Kin**/Personal representative was appointed in line with section 275 (1) (a) of the Armed Forces Act and the deceased has also not made a valid will under the Act, while the second instance, is where a deceased Service personnel, during his life time,

failed to appoint a Next-of-Kin along side with the direction of how his estate will be administered as mandated under section 275 (1) (a) and (b) of the Armed Forces Act and has not made a valid Will.

In the case of the first Instance, it could be seen that though a Personal representative was appointed by the deceased service personnel before his demise but such appointment was merely made on an administrative form which was not intended to be a Will. The appointment of personal representative under the Act is a mandatory requirement. It requires a Service Personnel upon enlistment, to declare the name of the person or persons to whom, in the event of dying without a Will, any money or personal property belonging to him/her should be delivered to⁵⁷. In addition to appointment of NOK/Personal representative, a Service Personnel is also required on enlistment, to direct that his estate, on his demise, is to be administered by a Customary Court in accordance with the customs of his tribe⁵⁸. Where compliance to this provision was made by the deceased Service Personnel, the Intestate estate of a deceased Personnel will be distributed strictly on the option chosen by him during his life time. It follows therefore that, once a Service Personnel has appointed a (Next-of- Kin)/Personal representative, any Officer of the Armed Forces or Accountant-General or any public department, having in possession or control of any accumulate pay, gratuity, allowances, personal property or any other funds belonging to the deceased Service Personnel may be

⁵⁷Section 275 (1) (a) of the Armed Forces Act (Cap A20) LFN 2004

⁵⁸Ibid, Section 275 (1) (b)

required to pay or deliver the said funds or property to the named Personal representative or deliver to Customary Court for further necessary action as the case may be⁵⁹.

The second instance, is where neither compliance to the mandatory requirement of appointment of Personal Representative nor valid will was made by a Service Personnel during his lifetime. Where a Personal representative was not appointed as in this case, here, the procedure for the distribution of the intestate estate is also divided into two: The procedure for distribution under Customary rules applicable to a non-muslim and the procedure for distribution under the Islamic Law of succession applicable to a muslim.

3.2.1 The procedure for a non-muslim deceased Personnel: The Intestate estate of a non-muslim Deceased Service Personnel may be delivered to the widow or child of the deceased or near relative of the deceased who proves to the satisfaction of the Commanding Officer or any Officer acting on his behalf, relationship as the widow of the deceased or the child or near relative of the deceased. And such delivery or payment is made on the basis that the distribution will be in accordance with the rules of succession of the tribe to which the deceased belonged⁶⁰. The proviso to Section 277 (1) of the Armed Forces Act provides as follows:

An Officer of the Armed Forces or Accountant-General or any public department having in his or its charge or control any pay, accumulation of pay, gratuity or other allowance or fund or

⁵⁹ Ibid, Section 275 (3)

⁶⁰ Ibid, Section 277

personal property or money of the deceased may, with the concurrence of the Commanding Officer or an Officer acting on behalf of the Commanding Officer, pay or deliver same to a claimant who proves to the satisfaction of the Commanding Officer or such Officer, relationship as the widow of the deceased or the child or other near relative of the deceased, as the case maybe, according to the rules of succession of the tribe to which the deceased belonged.

It is also pertinent to state that, where the claimant of the intestate estate of a non-muslim deceased Service Personnel are more than one, payment or delivery may be made in such shares and proportions as each claimant would be entitled to receive under the rules of succession prevailing among the tribe, or as nearly as may be⁶¹.

3.2.2 The procedure for a muslim deceased Personnel: Where the deceased was a Muslim, the distribution of the estate may be carried out by the Area or Sharia Court which has Jurisdiction in the district from which the deceased came, and such distribution by the Area Court will be done according to the tenets of Islamic Law. Where there is no Area or Sharia Court in the district, the distribution may be made as nearly as may be in accordance with Islamic Law⁶².

3.3 Payment of Debts of Deceased Service Personnel.

The death of Service Personnel is not a barrier to the recovery of debts owed by him during his life time. Whether a deceased Service Personnel died testate or intestate is immaterial. The Armed Forces Act has made provision for the application of the deceased Personnel's entitlement for the satisfaction of

⁶¹ Ibid, Section 277 (2)

⁶² Ibid, Section 277 (3)

debts owed by deceased personnel during their life time. Fundamentally, by Section 278 (1) of the Armed Forces Act, an Officer of the Armed Forces or the Accountant-General or any public department who has charge over the deceased Person's entitlements is mandated to apply such monies or any part thereof towards the payment of the debts owed by a deceased before distributing the entitlements; particularly, where his Will (if any) has not been proved or Letters of Administration have not been issued. However, before such application, the following condition must be satisfied⁶³.

- a. The claimant (Creditor) must prove the debts to the satisfaction of the Commanding Officer or any Officer acting on his behalf.
- b. It must also be proved that a demand was made within one year of the death of the deceased.
- c. Lastly, it must be proved that the debt was incurred within three years before the death of the deceased.

In view of the above conditions, it could be rightly deduced that the application of deceased Personnel's entitlement for the satisfaction of debts owed by him during his lifetime is subject to the limitations aforementioned; that is to say, apart from the prove of debts to the Commanding Officer, the demand or settlement of debts will be barred if it is made after one year of the death of the deceased or that the debt was incurred within three years before the death of the deceased.

⁶³Ibid, Section 278 (1) (a-c)

In addition to the above conditions, any person wishing to claim his debt out of any money belonging to a deceased service personnel, in the hands of an Officer of the Armed Forces or of the Accountant-General or any public department, must do so, by means of an official claim. And such claim is to be made to an officer responsible for the deceased Person's pay. Note that, a creditor cannot be entitled to obtain payment of his debt when this procedure is not complied with⁶⁴. Where the estate of the deceased is being administered by a Customary Court, any Government debt payable from the estate shall be paid by the Officer concerned before the balance of the estate is passed to the Customary Court. And that Court shall thereafter be responsible to see that all other debts are settled before final distribution of the estate of the deceased Service Person⁶⁵.

3.4 Distribution Subject to Right of Creditors

Sometimes, before a creditor realizes, money or personal property belonging to a deceased Personnel may have been delivered to his Personal representative consequently where money or personal property or other entitlements of the deceased Personnel has already been distributed to either of the following:

1. The Person or Persons recorded as Next-of-Kin/Personal representative pursuant to section 275 (1) of the Armed Forces Act,
2. A beneficiary under the Will of the deceased Personnel.

⁶⁴Ibid, Section 278 (2)

⁶⁵Ibid, Section 278 (3)

3. Claimant of the deceased Personnel who proves relationship as the widow or child of the deceased or other near relative of the deceased pursuant to section 277 of the Armed Forces Act.

Such creditor of the deceased Personnel have the same rights and remedies against the person to whom the money or personal property is paid or delivered as if that person had received the money or Personnel Property as legal Personal representative of the deceased person⁶⁶.

3.5 Deceased Personnel's Money undisposed of, to constitute a fund.

Sometimes certain circumstances may render the Personal Property or entitlements of a deceased Service Personnel a charitable property. Various circumstances may warrant this conversion. However, a typical instance, is the subsequent death of the deceased Personal representative, beneficiaries (If there is a Will) or his immediate claimants such as: Widow, child and near relatives.

Generally, under the Armed Forces Act,⁶⁷ where a valid claim was not made to a deceased Personnel's entitlements within one year, the entitlements is to be converted into cash where necessary and be paid to the Accountant-General of the federation through appropriate channels and such unpaid entitlements is to be used to establish a fund for the benefit of Service Personnel and ex-Service Personnel in distress or for the benefit of the Armed Forces in general or for charitable purposes.

⁶⁶Ibid, Section 279

⁶⁷Section 280 (1)

It is pertinent to note that, notwithstanding the above position, any beneficiary or claimant who subsequently resurfaces may still establish a legitimate claim within 12 months after the application of the entitlements to the constituted fund.⁶⁸

By the provision of the Armed Forces Act,⁶⁹ it is the responsibility of the Honourable Minister of Defence to make regulations towards the formation of the fund and any disbursement there from. This is done in consultation with the Forces Council.

3.6 The Armed Forces Act and Succession under customary Law.

In many respect, military Laws are enacted to cater for the circumstance of the Military Service or exigency of Military Service. However, what is always require is that the Laws or application of the Laws should not be inconsistent with the provisions of the 1999 Constitution of the Federal Republic of Nigeria⁷⁰(As amended). The Armed Forces Act (Cap A20) Laws of the Federation of Nigeria2004 being the current statute regulating the Military in Nigeria was enacted and recognized pursuant to section 315 of the 1999 Constitution of Federal Republic of Nigeria.

The Armed Forces Act embodied both testate and Intestate procedure for the distribution of the property of deceased Service Personnel. While dealing with the Intestate procedure, the Armed Forces Act made resort to distribution according to the rules of succession of the tribe to which the deceased belonged

⁶⁸Ibid,Section 280 (2)

⁶⁹Ibid, Section 280 (3)

⁷⁰Section 1 (3) CFRN 1999

or in accordance with Islamic Law if the deceased was a Muslim. Invariably, rules of succession of a tribe of a given Area is the native law and custom of that society. The native law and custom of the various ethnic groups in Nigeria constitutes their own common law. Consequently, native law and custom constitute Customary Law hence, Succession under Customary law is the devolution of title to property in accordance with the native law and custom of a particular society. It is pertinent at this point to note that section 2 of the High Court Law Cap. 49 Laws of Northern Nigeria, 1963 regarded Moslem Law as native law and custom. This notwithstanding, the Islamic Law of Succession is hinged upon two pillars-the *Mirath* and the *Wasiyyah*. The *Mirath* covers the entire aspects of Intestate succession under the Islamic Law and gravitates to lay a firm foundation for the procedure of *Wasiyyah*- (i.e) the testate succession which allows the muslims to devise of not more than one-third of their estate as testamentary gift.⁷¹

Succession under Customary Law is essentially intestate succession. It applies only to the estate of a person who is subject to Customary Law who dies without leaving surviving him, a spouse or a child of a statutory or Christian marriage.⁷² The rules of succession under the Customary Systems in Nigeria are as varied as the ethnic groups themselves, for example, in Yoruba areas, succession is based on the concept of family property, while in other parts of the country for instance, Ibos and few others, the concept of male succession

⁷¹Abdulrashid, Y., & Okoh, S.E.E., (2011) succession under Islamic Law, Malthouse Press Limited, Lagos p. 3

⁷²Sagay, I., op. cit p. 257

prevailed until the Court of Appeal declared such discrimination ran contrary to natural Justice, equity and good conscience in *Mojekwu v. Mojekwu*⁷³. Similarly in some areas, the concept is that of primogeniture, i.e succession by the oldest male child.⁷⁴ Basically, which ever concept is adopted, the requirement is that, Customary Law must pass three tests as underlisted:

1. It must not be repugnant to natural Justice, equity and good conscience.
2. It must not be inconsistent with public Policy.
3. It must not be incompatible with any written Law in force at the time.

It is pertinent to note that, an order which is lawful by native law and custom is not contrary to natural Justice merely because it is contrary to the English common law. The question whether a particular custom is repugnant is a matter of law and not fact. Note equally that, the Courts have come to recognize the fact that, a rule of Customary Law which denies a person a right to which he would be entitled under English law is not in itself sufficient to invalidate that rule. For instance, succession by a widow. As a general rule, a widow under Ibo Customary Law, is not entitled as of right to succeed the personal or real estate of her deceased husband⁷⁵. This principle was applied by the Supreme Court in the case of *Nezianya v. Okagbue*⁷⁶. Although, this position

⁷³ (1997) 7 NWLR (pt 512) 283.

⁷⁴ Ibid

⁷⁵ Nwogugu, E.I., (2001) *Family Law in Nigeria*, Heinemann Educational Books (Nigeria) PLC p. 407

⁷⁶ (1963) 1 ALL N.L.R 352

has been changed in the case of *Ukeje v Ukeje (Infra)* however, it is a settled Law that, if a person marries under the Customary Law, all the legal consequences of the Marriage will be dictated by customary law. However, if he marries under the Marriage Act⁷⁷, Customary Law will be displaced and the applicable law will be the statutory rules contained in the Marriage Act. Instances of the later circumstance can be seen in the following cases:*Cole v. Cole*⁷⁸, *Coker v. Coker*⁷⁹ and *Ashiata v. Goncallo*⁸⁰. However, there are certain modifications with regard to these later cases⁸¹.

Under the Armed Forces Act, the procedure for Intestate succession was split up in two respective methods as seen above. The first, is where money or Personal Property of the deceased Service Personnel is delivered or paid to the person or persons appointed by the deceased during his life time, as (Next-of-Kin) otherwise known as Personal representative⁸². The question here is, who is a Personal representative? And whether a Personal representative could be a beneficiary of the estate of deceased Service Personnel? To answer these questions, let's start with the meaning of a Personal representative. A Personal representative is a person who manages the legal affairs of another because of incapacity or death, such as the executor of an estate. Technically, while an executor is a personal representative named in a will, an administrator is a

⁷⁷Cap, 218 Laws of the Federation of Nigeria, 1990. Section 35

⁷⁸(1898) 1 NLR 15

⁷⁹(1943) 17 NLR 55

⁸⁰(1900) 1 NLR 41

⁸¹Section 49, (5) of the Administration of Estates law of Western Nigeria and the case of *Coleman v. Shang* (1961) 2 All ER 406.

⁸²section 275 of the Armed Forces Act (Cap A20) LFN 2004

Personal representative not named in a will.⁸³ Consequently, since the prescribed form used in the appointment of (Next-of-Kin)/Personal representative by Service Personnel is not a will under the Act, the person or persons named in the form will be rather considered as an administrator or administrators as the case may be. There could be a General or a Special Administrator. A general administrator is a person appointed to administer an Intestate decedent's entire estate⁸⁴ while a special administrator is a person appointed to administer only a specific part of an intestate decedent's estate⁸⁵. It follows that, a Personal representative under the Act is a Special Administrator since the Armed Forces Act do not cover the distribution of all the estate possessed or owned by the deceased outside the Military circle. Having critically analysed the status of Personal representative under the Act, it is pertinent to state that a Personal representative under the Act could also be part of the beneficiaries or sole beneficiary of the estate of the deceased personnel if he or she is part of the heirs of the deceased. Procedurally, the division and distribution of the remains are usually made within the heirs of the deceased. An heir is a Person who, under the laws of intestacy, is entitled to receive an intestate decedent's property⁸⁶. Under the Armed forces Act, the determination of who is an heir is

⁸³ Garner, B.A., (2004) Black's Law Dictionary, Thomson West, U.S., Eight Edition P. 1328

⁸⁴ Ibid, p.49

⁸⁵ Ibid, p. 50

⁸⁶ Ibid, p.740

subject to the rules of succession of the tribe to which a deceased Personnel belongs or in accordance with Islamic law, if the deceased was a Muslim⁸⁷.

Having examined the status of a Personnel representative, it is important to discuss the sources of power of Personal representative under the law of succession. Generally, an executor (Personal representative) appointed by the Will of the deceased has the legal authority to act from the death of the testator. He need not wait for the probate to issue before he acts. On the other hand, until an administrator (Personal representative of an intestate) is clothed with the authority of the court, he cannot act. Most important decisions with regard to the affairs of the deceased would have to wait until Letters of Administration issue.⁸⁸ This procedure could be rightly envisaged under the various Wills Acts in Nigeria and the intestate Estate Act of 1890. However, under the Armed Forces Act, intestate succession is purely succession under Customary Law or Islamic Law. It is doubtful whether the provisions of the Armed Forces Act regarding Intestate succession/Distribution required the Personal representative to be clothed with Letters of Administration before the distribution of the Estate of a deceased service personnel.

The second Intestate procedure under the Armed Force Act is where money or Personal Property belonging to deceased service personnel is delivered or paid to a claimant who proves to the satisfaction of the Commanding Officer, relationship as the widow of the deceased or child or

⁸⁷Section 277 (2) and (3) of the Armed Forces Act (Cap 20) Laws of Federation of Nigeria 2004

⁸⁸Abayomi, K., (2004) *Wills Law and practice*, Mbeyi & Associates (NIG) Ltd, Lagos p.10

other near relative of the deceased, according to the rules of succession of the tribe of the deceased service personnel⁸⁹.

The above circumstances occur when the deceased service personnel failed to neither appoint a Personal representative during his life time nor make a valid Will. Here, the Armed Forces Act split the circumstances into two i.e where the deceased service personnel is a Non-muslim and where he is a Muslim⁹⁰. In the case of a deceased muslim, the Armed Forces Act was clear and specific to such an extent that neither of the claimants as mentioned in the said provision⁹¹ could assume the status of sole beneficiary of the estate of the deceased, since the distribution of the estate is required to be carried out in accordance with the Islamic Law and the determination of heirs under the Islamic Law depends on three principal classes of heirs as classified by the majority of Muslim Jurists⁹². These include:

- a. Qur'anic Heirs - (Called Sharers)
- b. Agnatic Heirs - (Called Residuaries)
- c. Uterine Heirs - (Called Distant Kindred)

It is pertinent to note that, the property of the deceased goes in the first instance, to the Qur'anic heirs, if the estate is not exhausted by them, or in their absence, it goes to the agnatic heirs. And finally, in the absence of heirs of classes (a) and (b), the property is distributed among the uterine heirs according

⁸⁹Section 277 of the Armed Forces Act (Cap A20) LFN 2004.

⁹⁰Ibid, Section 277 (3)

⁹¹Ibid

⁹²Gurin, A.M., (1999) *An Introduction to Islamic Law of succession*, Joda press ltd, Zaria p. 58

to Hanafi Law, but to Maliki Law, the remaining property will go to the public treasury (Bait al-mal).

In the case of a non-muslim, the Armed forces Act stipulated that the distribution of the intestate deceased Personnel is to be made according to the rules of succession of the tribe to which the deceased belonged. The Armed Forces Act further stipulated that where claimants of a deceased Personnel are more than one, distribution should be made in such shares and proportions as each claimant would be entitled to receive under the rules of succession prevailing among the tribe of the deceased⁹³. From the foregoing, it is not in dispute that the rules of succession of the tribe of the deceased connotes the Customary Law of succession applicable in his locality. As noted earlier, the rules of succession under the Customary systems in Nigeria are varied. There are various concept to the rules of succession. Each concept is valid to the extent that the originators appreciated and adopted it. Determination of an heir under the customary systems depends on the customs of a particular ethnic group. For instance, in Lagos and Western Nigeria, under the modern Yoruba Customary Law, children are considered as the heirs of their deceased father and there is no distinction between male and female in the distribution of their father's estate⁹⁴. However, there are some minor variations in some parts of the old West. Thus in Abeokuta the custom is that on a man's death, two-thirds of

⁹³Ibid, Section 277 (2)

⁹⁴Sagay, Op.Cit.p263

his property go to his children and one-third go to his brothers and sisters⁹⁵. While in the former Eastern Nigeria, four main types of succession within the dominant patrilineal system were identified as listed hereunder⁹⁶. Please note that, the underlisted position regarding the exclusion of woman as heirs under the Customary Law has been reversed following the Supreme Court decision in the case of *Ukeje v. Ukeje*⁹⁷.

- (i) Amongst the Ibo, Ibibio, Annang, Oron, Obanliko, Abua and Ogoni, the deceased's property is shared by sons, brothers, fathers, uncles, i.e male relations, excluding daughters, wives, sisters, mother.
- (ii) Amongst the Ijaw, the form of marriage entered into by a woman determines the family to which her children succeed. The children of an Igwa marriage, involving lesser expenses and a smaller bride price, belong to and have succession rights in their mother's family. On the other hand, the children of an Iya marriage, involving greater, expenses and a higher bride price belong to and have succession rights in their father's family. For other purposes the line of succession under (II) is the same as in (I).
- (iii) Amongst the Efik and Umon, both male and female children have rights of succession to their father's property.

⁹⁵ Ibid

⁹⁶ Ibid P. 264

⁹⁷ (2001) 27 WRN

- (iv) While amongst the Boki, the children are excluded from the line of succession. Rather it is the father, eldest brother, uncle etc, who succeed. The wife and sisters are also excluded.

A practical case of the divergence of customs in Nigeria, is a case of a widow under Ibo Customary Law. In the case of *Nezianya v. Okagbue*⁹⁸. It was held by the Supreme Court inter alia that, as a general rule, a widow under Ibo Customary Law is not entitled as of right to succeed the personal or real estate of her deceased husband. Though this position has been reversed as noted above.

It was observed that the intestate provision under the Armed Forces was silent on the marital category of a claimant of the estate of a deceased Personnel who is a widow. (i.e whether the widow was married to the deceased Personnel under Customary Law or under Marriage Act). Fundamentally, where the marriage was Customary Law, the situation is less cumbersome since the Act itself stipulated that distribution is to be made in accordance with the Customary Law depending on the customs of the deceased personnel. However, where the marriage was under the marriage Act, the Armed Forces Act needs to be clear as to which of the Act prevail. A Nigerian may elect to marry either under Customary Law or under the marriage Act Cap. 218 Laws of the Federation of Nigeria, 1990. Ordinarily if a person marries under Customary Law, all the legal consequences of the marriage will be dictated by Customary Law. On the other

⁹⁸Supra

hand, if he marries under the Act, Customary Law will be displaced and the applicable Law will be the statutory rules contained in the Marriage Act. The need for clarity here is essential particularly where the Armed Forces Act which require distribution in accordance with the rules of succession of the tribe of the deceased Personnel is a statute itself.

3.7 The Analysis and Interpretation of Data on the Perception of some Members of the Armed Forces on the status of NOK/Personal representative.

This section deals with analysis, interpretation and presentation of data received from the field through the administration of questionnaire. The section is devoted to data presentation on military personnel within 1 Division of the Nigerian Army. A total of one hundred (100) questionnaires were administered but only eighty five (85) were retrieved and used for analysis.

3.7.1 Socio Demographic Attributes of Respondents

Table 3.7.1.1: Age of Respondents

Age	Frequency	Percentage
25-30	12	14.1
31-35	33	38.9
36-40	34	40
40-above	6	07
Total	85	100.0

The above table shows that the highest percentage of the respondents (79%) were basically young Military Personnel who are between the age of 31-40. This means, most of the respondents are young people.

Table 3.7.1.2: Sex of Respondents

Sex	Frequency	Percentage
Female	12	14.1
Male	73	85.9
Total	85	100.0

The table above indicates that majority of the respondents were males and they constituted the highest percentage (85.9%).

Table 3.7.1.3: Marital Status of Respondents

Status	Frequency	Percentage
Single	9	10.6
Married	75	88.2
Separated	1	1.2
Divorced	-	-
Total	85	100.0

The table above shows that 75 of the total respondent (88.2%) are married, closely followed by 9 respondents (10.6%) who are single 1 respondent (1.2%) who is separated and constituted the least percentage of the respondents. It can be deduced from above that most of the respondents were

married and therefore responsible enough to give relevant information on the subject matter.

Table 3.7.1.4: Educational Status of Respondents

Status	Frequency	Percentage
Secondary School Certificate	5	5.9
DIP/NCE	40	47
First Degree/HND	30	35.8
Postgraduate	10	11.8
Total	85	100.0

The table above indicates that virtually all the respondents represented by about 94% do have at least tertiary educational qualification. From the above, it is obvious that majority of the respondents were literate enough to understand the subject matter of the study.

Table 3.7.1.5: Length of Service of the Respondents

Length of Service	Frequency	Percentage
Below 5 years	5	5.9
5-10 years	15	17.6
11-20 years	30	35.3
21-34 years	35	41.2
Total	85	100.0

The table above shows that 35 of the total respondents (41.2%) had served the Nigerian Army for between 21-34 years. Closely followed by 30 respondents (35.3%) who served between 11-20 years. 15 respondents (17.6%)

served between 5-10 years with only 5 respondent (5.9%) served below 5 years. This shows that most respondents have served the Nigerian Army for upward of 10years.

Table 3.7.1.6: Rank Category

Rank Category	Frequency	Percentage
NCO	15	17.6
Senior NCO	45	53
Junior Officers	21	24.7
Senior Officers	4	4.7
Total	85	100.0

The table above indicates that 45 out of the total respondents (53%) are Senior Non-Commissioned Officers (S/NCOs) in the Nigerian Army, closely followed by 21 respondents (24.7%) who are Commissioned Officers (Junior) while 15 respondents (17.6%) are the Non-Commissioned Officers and 4 respondents (4.7%) are the Senior Officers.

3.7.1.7 Corps/Departments of Respondents

Most of the respondents are from the following corps: Infantry Corps, Engineers (NAE), Military Police (NACMP), 55 respondents were from Infantry Corps, 9 were from Engineers (NAE), 21 respondents were from Military Police.

3.7.2 Respondents Knowledge on the status of NOK/Personal representative.

Perception of a group of persons over a particular subject can only be drawn from the knowledge or believe they have on that subject. In order to find out the true perception of the respondents in this experiment, it is pertinent to determine the respondents knowledge on the status of NOK. The table below reveals the respondents knowledge on the status of NOK:

Table 3.7.2.1: Respondents Knowledge on the status of NOK

Views	Frequency	Percentage
Sole beneficiary	45	52.9
The only heir	10	11.8
A representative	30	35.3
None of the above	0	0
Total	85	100.0

The table above indicates that 45 out of the total respondents (52.9%) were of the view that a NOK is the sole beneficiary of property of deceased service Personnel, closely followed by 10 respondents (11.8%) who were of the view that a NOK is the only heir of deceased service Personnel, while 30 respondents (35.2%) were of the view that a NOK is a representative of deceased service Personnel. From this, it can be deduced that majority of the respondents were of the opinion that NOKs are sole beneficiaries of the property of deceased service Personnel.

3.8 Conclusion

This chapter examined generally intestate succession under the Armed Forces Act. It discussed the nature of intestate succession under the Armed Forces Act and outlined some processes under the intestate procedure such as: payment of debts of Deceased Service Personnel, distribution subject to right of creditors, Deceased Personnel's money undisposed of, to constitute a fund. The chapter subsequently juxtaposed the Armed Forces Act and succession under the Customary Law and finally, analyzed and interpreted the Data on the perception of some members of the Armed Forces on the status of NOK/Personal representative.

CHAPTER FOUR

ADMINISTRATION OF ESTATES OF DECEASED

MILITARY PERSONNEL UNDER THE ARMED FORCES ACT

4.1 Introduction

The Armed Forces Act virtually consist of testate and intestate procedures for the administration of estate of deceased Military Personnel. A service personnel under the testate procedure may wish to dispose off his estate by making a will (during his life time) stating how his property will be disposed and who will dispose same. Those selected or appointed are called personal representatives (in this respect executors). This chapter intends to discuss what these representatives do with the estate of the service personnel i.e (testator) after his death and how they administer the estate. The chapter will also discuss other kind of representatives not appointed by the will of service personnel but recognized under the Armed Forces Act⁹⁹. Owing to the fact that the intestate procedure under the Act took cognizance of the Customary and Religious sensibilities of service Personnel, this chapter will also discuss generally on the duties of a Personal representative under such circumstances and other intricacies. Subsequently, the chapter shall examine the Jurisdiction of Sharia Courts and Customary Courts on succession matters.

⁹⁹ Sections 275 (1) and 277 (1) of the Armed Forces Act (cap A20) Laws of Federation of Nigerian 2004.

4.2 The Appointment and Duties of an Executor under the Armed Forces Act

As noted earlier in chapter two, an executor is a Personal representative named in a Will¹⁰⁰. He is the person to whom the execution of a Will, that is, the duty of carrying its provisions into effect is confided by the testator¹⁰¹. Generally, the administration of estate law of a given environment and the Will which names and appoints executors map out the perimeter of the powers and duties of executors. An executor is appointed by a will and therefore he derives authority to act from the Will¹⁰². The Court confirms this by the grant of probate¹⁰³. A Personal representative named in a will discharges several duties which cannot be exhausted here. Some are imposed by law and some may be stated in the Will that appointed him. However, generally, apart from the duties of an executor to bury the deceased; to pay or recover the debts of the deceased; to pay the legacies and distribute the residue among the persons entitled; an executor is also responsible for the following duties:

4.2.1 Applying for the Grant of Probate

It is the duty of the executors to apply to the high court for the grant of probate. As soon as the testator dies the executors should approach the probate

¹⁰⁰ Garner, B.A., (2004) *Black's Law Dictionary*. Thomson West, U.S., Eight Edition P. 1328

¹⁰¹ Osborn, P.G., (1964) *'A concise Law Dictionary'* London, Sweet & Maxwell, fifth Edition p. 130

¹⁰² Section 276 (2) of the Armed Forces Act (Cap A20) LFN 2004.

¹⁰³ Abayomi, op. cit. p. 136

Registrar to enquire whether the deceased's Will was lodged there¹⁰⁴. A simple letter is written to the Probate Registrar asking whether the deceased lodged his Will in the Registry and if he did, the Registrar should arrange a date for the official reading of the Will. The executors should send the names and addresses of the dependants of the deceased to the Registrar. If a Will is found, the Probate Registrar's assistants will cause to issue, letters to the known dependants to attend at the High Court on a given date for the purpose of reading the Will of the deceased. On the appointed date the Registrar will formally read the will together with any Codicil (s) if any. Thereafter the Probate Registry opens a file in the name of the deceased. Anyone interested can then apply for the certified true copies of the Will and other testamentary documents. In applying for the grant, the executors are advised to seek legal assistance. Lawyers who are experienced in probate matters can assist the executors to apply for the forms. The lawyers will also attend to the completion of the forms. Where the estate is not large and the services of lawyers cannot be afforded, the executors can obtain and complete the forms by themselves. Staff in the Probate Registry are skilled and helpful. They will give routine advice and assistance to the executors on the various steps they need to take to obtain a grant. Essentially the following

¹⁰⁴ Ibid, p. 138-139

forms will have to be obtained completed and returned to the Probate Registry for further processing¹⁰⁵:

- (a) Oath for Executor;
- (b) Inventory;
- (c) Declaration of Next-of-Kin;
- (d) Schedule of Debts and Funeral Expenses’
- (e) Particulars of Realty;
- (f) Affidavit of Attesting Witnesses;
- (g) Bank Certificate.

4.2.2 Inventory and Account

The law requires a personal representative to exhibit inventory and accounts of the estate under oath whenever he is lawfully required to do by the court¹⁰⁶. Upon taking probate an executor and an administrator on taking out letters of administration takes an oath that inter alia he will exhibit a true and perfect inventory of the deceased’s estate devolving upon him and render a just and true account hereof whenever required by law so to do¹⁰⁷. A personal representative may be compelled at the instance of a beneficiary or a creditor to exhibit an inventory. If the court finds upon investigation that the account is true

¹⁰⁵ Ibid

¹⁰⁶ See Section 14 Administration of Estates Law Cap A3 of Lagos State, 2003.

¹⁰⁷ Abayomi, op.cit p. 139

and perfect, it will vouch for it¹⁰⁸. In the case of *Onayemi v. Okunubi*¹⁰⁹ the executors did not render any accounts for over ten years after the grant of probate. The plaintiffs asked the executors to file accounts. The trial judge said that the executors were guilty of “gross dereliction of one of their most important duties” because they never filed accounts. The executors argued that there was no obligation on them to file accounts. That they could only file accounts in the manner prescribed by law. Bairamian JSC delivering the judgment of the Supreme Court held that an executor has a duty to keep clear and distinct accounts of the property which he is bound to administer especially where the interests of minors are involved.

4.2.3 Gathering the Assets

Allied to exhibiting inventory is the location and the gathering of the deceased’s real and personal property. It is the duty of the executor to find and gather all assets. Real property should be located including all documents relating thereto. If the documents cannot be located at home or in the office, enquiries should be made at the banks¹¹⁰. S.2 (1) of the Administration of Estate Law¹¹¹ describes personal chattels as carriages, houses, stable furniture, and effects (not used for business purposes) motor cars and accessories (not used for

¹⁰⁸ Ibid

¹⁰⁹ (1965) 1 All NLR 362

¹¹⁰ Abayomi, op.cit p.141

¹¹¹ Cap A3 of Lagos State, 2003

business purposes) garden effects, domestic animals, plates, plated articles, linen, china glass, domestic-books, pictures, prints, furniture, jewellery, articles of household or personal use or ornaments, musical and scientific instruments and apparatus, wines, liquors and consumable stores but not including any chattels used at the death of the intestate for business purposes nor money or securities for money. On the other hand property is defined to include a thing in action and any interest in real or personal property. All these must be identified, valued and kept under safe custody and security¹¹².

4.2.4 Suing and being Sued

The executors can sue and be sued. All causes of action subsisting against or vested in the deceased shall survive against or for the benefit of his estate except causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claims for damages on the grounds of adultery¹¹³. It should be noted that Personal Representatives of a deceased person are entitled to take proceedings which are preservatory in nature. They could take proceedings to marshal or gather in an estate. That cannot be regarded as part of the administration of the estate. Also by section 15 (1) of the Administration of Estates Law, Cap. 3 Laws of Lagos State, 1994, all the causes of action subsisting in or vested in the deceased, will devolve on his estate,

¹¹² Abayomi, Op. cit p. 142

¹¹³ Section 15(1) AEL op.cit.

unless such actions are of a personal nature like defamation, seduction, enticement and harbouring, or claims for damages for adultery. This means that the deceased's Personal Representatives can continue such actions after his death.¹¹⁴ Also executors can exercise powers for an end which is consistent with their fiduciary duties. Thus, in *Remi Okunowov. Chief Funlola Okunawo*,¹¹⁵ one of the beneficiaries of a Will fell gravely ill before the distribution of the Estate. The doctors stated that the beneficiary needed over 7 million naira for urgent medical treatment abroad. Although the executors of the Will were individually willing to grant assistance needed from the estate, they were unable to hold a formal meeting to approve the application, and some executors were not even certain that they had the power to approve such a grant to a beneficiary. In ordering that the money be paid to the gravely ill applicant, the Court stated that when a plaintiff seeks from the Court, an order upon executors to do or to abstain from doing a particular thing in the course of their administration as executors, there is upon the plaintiff or applicant the onus of proving to the Court, that the order sought is consistent with the faithful performance by the executors of their fiduciary duties. In the instant case the Court was satisfied that

¹¹⁴*Shamefun v. Shade* (1999) 12 NWLR (Pt. 632) 531 at 537

¹¹⁵ (2001) 2 L.H.CR. (pt.9) p. 56

the order sought was consistent with the faithful performance by the executors of their fiduciary duties¹¹⁶.

4.2.5 Right of Distress

The executors may distrain upon land for arrears of rents due or accruing to the deceased in like manner as the deceased might have done had he been living¹¹⁷. This process may involve the taking out possession of personal chattel of a defaulter by an executor or an officer of the court into the custody of the law to be impounded as a pledge in order to bring pressure to bear upon the owner of the chattel to redress an injury or to satisfy a lawful demand subject, however, to the right of the owner to have the chattel returned to him upon the injury being redressed or the demand satisfied¹¹⁸

4.3 Appointment of NOK/Personal Representative under the Armed Forces Act

A Personal representative under the Armed Forces Act is any person or persons whose names were declared by a service Personnel under the Act (upon enlistment or during his service years)¹¹⁹ as persons whom any money or personal property belonging to the personnel should be paid or delivered; in case he died without a valid Will.

¹¹⁶Sagay, I.,(2012) *'Nigerian Law of Succession'* Malthouse Press Limited p. 340-341

¹¹⁷Section 16 AEL op.cit

¹¹⁸ Garner, B.A.,op. citP. 508

¹¹⁹ Section 275 (2) of the Armed Forces Act for subsequent alteration.

It is a mandatory requirement that every service Personnel must appoint a Next-of-Kin/Personal representative. The Act provides thus: “A person subject to service law under this Act shall on enlistment declare the name of the person or persons to whom, in the event of his dying without having made a will, any money or personal property belonging to him should be paid or delivered”¹²⁰.

In practice, the declaration or appointment of a Personal representative is done in the course of filing the series of forms that are filed by every service Personnel upon enlistment or subsequently, during his service years, in a report form made for alteration of such declaration or appointment¹²¹.

A Personal representative under the Armed Forces Act is not an executor of a Will made under the Act, any person taking out representation to the testator under a Will made under Act shall exclusively be deemed the testator’s representative with respect to the money or Personal Property thereby bequeathed¹²².

A Personal representative appointed by virtue of section 275 (1) (a) of the Armed Forces Act is only a representative of a service Personnel in the case the service Personnel died without a valid Will.

¹²⁰ Section 275 (1) (a) of the Armed Forces Act (Cap A20) LFN 2004.

¹²¹ Ibid Section 275 (2)

¹²² Section 276 (2) of the Armed Forces Act.

4.4 Legal Issues on the Appointment of NOK vis-à-vis Duties of NOK/Personal Representative and Claimants under the Armed Forces Act

The Armed Forces Act¹²³, particularly section 275 (1) (a) and subsection (3) of same section provides as follows:

- (1) A person subject to service law under this Act shall on enlistment -
- (2) Declare the name of the person or persons to whom, in the event of his dying without having a valid will, any money or personal property belonging to him should be paid or delivered.
- (3) An Officer of the Armed Forces or of the Accountant-General or any public department, having in his or its charge or control any pay, accumulation of pay, gratuity or other allowance or fund or any personal property or money belonging to a person subject to service law under this Act dying intestate who has complied with provisions of sub-section (1) of this section, may pay or deliver the same to the person whose name has been recorded, or to the Customary Court which has Jurisdiction in the place named by that person in the prescribed manner.

¹²³ (Cap A20) LFN 2004

Looking at the above provisions, it is clear that the following issues are the key elements deductible from the provisions:

- That a Personal representative represent deceased service Personnel in the event he died without having made a valid will.
- That any money or Personal Property belonging to the deceased is paid or delivered to the Personal representative.

None of the provisions above empowered the NOK/Personal representative to discharge any duties when such money or Personal Property is delivered to him, including the distribution of the said money or personal property of the deceased to the heirs. Unlike in a Will, where a Personal representative (an executor) derives his powers and discharge his duties based on the will, the duties of a Personal representative under the Act are not expressly stipulated. The provisions only made reference to any money or Personal Property of the deceased to be delivered or paid to the personal representative but silent on what the Personal representative will do with such money or property. With this omission, 3 questions may be raised as follows:

- Whether or not the money or personal property is to be delivered or paid to a personal representative as a sole beneficiary?
- Whether or not the money or personal property is to be delivered or paid to a Personal representative to be distributed by him to beneficiaries/heirs?
- Whether or not the money or personal property is to be delivered or paid to Personal representative for onward delivery to the appropriate body or institution responsible for distribution of the intestate estate to heirs/beneficiaries?

Looking at the above questions critically, one will opt for the third question and answer it in the affirmative particularly when the Armed Forces Act stipulated the method of distribution to be in accordance to the rules of succession of the tribe of the deceased Personnel or Islamic Law where the deceased is a muslim. Distribution under either of these procedures may be made by Court or a distinct body or institution depending on the customs of each tribe. Therefore, a Personal representative under the Act cannot either assume the powers of a Personal representative under a valid will or assume the status of a sole beneficiary of the estate of the deceased simply because the estate is delivered to him. Presumably, his basic responsibility in this regard is to receive and deliver same to the appropriate quarter for distribution accordingly.

Going by the first and second questions raised above, the answers will definitely be in the negative since the instrument appointing NOK/Personal representative under the Act is not a Will. And Personal representatives under the Act are not expressly empowered to distribute the estate of deceased service Personnel. Under the Armed Forces Act distribution are made according to the rules of succession of the tribe of the deceased or in accordance with Islamic Law where the deceased is a Muslim. Where the rules of succession or Islamic Law permits Courts or a body of persons to distribute, an NOK/Personal representative cannot outrightly discharge the function of a Court or body of persons.

4.4.1 Legal Issues on Claimants of an intestate Estate under the Armed Forces Act

The issue of claimants of an intestate estate of deceased service Personnel is provided in section 277 (1) of the Armed Forces Act¹²⁴. The Act provides thus:

- (1) If a person subject to service Law under this Act -
 - (a) Dies without having complied with the requirements of this part of this Act as to the disclosure of next of kin; or
 - (b) Has not made a Will valid under this or any other enactment relating to Wills and for the time being in Force.

¹²⁴ (Cap A20) Laws of the Federation of Nigeria 2004.

An Officer of the Armed Forces or the Account-General or any public department having in his or its charge or control any pay, accumulation of pay, gratuity or other allowance or fund or personal property or money of the deceased may, with the concurrence of the commanding Officer or an Officer acting on behalf of the Commanding Officer, pay or deliver same to a claimant who proves to the satisfaction of the Commanding Officers or such Officer, relationship as the widow of the deceased or the child or other near relative of the deceased, as the case may be, according to the rules of succession of the tribe to which the deceased belonged.

As it can be seen above, the circumstance of claimants arises where a service Personnel dies without appointing/declaring NOK/Personal representative or has not made a valid will. In this situation, any money or Personal Property of the deceased may be delivered or paid to a claimant who proves to the satisfaction of the Commanding Officer, relationship as the widow of the deceased or the child or other near relative of the deceased, as the case may be, according to the rules of succession of the tribe to which the deceased belonged. Going by the Customary rules of succession as stipulated by the Act, there is need to determine whether each claimant under the Act will receives the intestate estate

of the deceased as a sole beneficiary or representative vis-a-vis the intricacies behind the status of each claimant. These shall be examine here under:

4.4.1.1 A Widow of a Deceased Personnel.

Under the Armed Forces Act distribution of an intestate estate is made according to the rules of succession of the tribe of the deceased Personnel or in accordance with Islamic Law where he is a Muslim¹²⁵ therefore, any money or Personal Property claimed or delivered to the widow of a deceased Personnel is subject to distribution in accordance with the Customary Law of the locality of the deceased hence, a widow who receives an intestate estate in this regard, may only be said to have acted on representative capacity and therefore an implied Personal representative. At this juncture, it is patinent to state that, in Nigeria save for the muslim woman, there is no religion or custom that gives woman a definite share of inheritance in her deceased father's, Husband's or even child's estate talkless of treating them on equal footing with their male counterpart. At best under some customs they are given the right of care, maintenance and accommodation in their deceased relation estate. Where their right to inherit is recognised, they are subjected to discrimination and inequality in favour of their male counterpart. For example, under the Bini Customary Law the oldest surviving male child is given the exclusive right to inherit his father's (Igiogbe)

¹²⁵ Ibid,Section 277 (3)

i.e the house in which the deceased lived, died and was buried¹²⁶. Under the Yoruba Custom, the two recognized types of inheritance Idi-igi (sharing equally per the number of wives the deceased had) and Orioji'ori (sharing equally per the number of children) are intended to benefit the children not the wife(s). under the Igbo Customary Law, females do not possess the rights to inherit and, neither the wives, daughters nor the widows of the deceased has right to inherit or partake in property sharing in the intestate estate of the deceased¹²⁷. In *Ugboma v. Ibeneme*¹²⁸, it was held in accordance with Igbo general custom that women were not entitled to inherit land from their father. Daughters like wives, do not inherit under the Igbo Customary Law. In *Mojekwu v. Iwuchukwu*¹²⁹, the deceased had two female children, upon his death his male nephews claimed to be entitled to his estate. The Court of Appeal rejected the view and held that such a discriminatory custom is repugnant to natural Justice, equity and good conscience and therefore not enforceable. However, the Supreme Court rejected the decision of Court of Appeal and upheld the “Iri-ekpe custom”-which permits the son of the brother to inherit to the exclusion of his female child. Similar

¹²⁶ *Uwaifo vs Uwaifo* (2004) All F.W.L.R. Part 229 P. 808 at P.813, *Lawal Osula vs Lawal Osula* (1995) 9 N.W.L.R. Part 419 P.259 at P. 281

¹²⁷ See the cases of *Ugboma v. Ibeneme* (1961) 1 All NLR 352 and *Mojekwu v. Iwuchukwu* (2004) 11 NWLR

¹²⁸ (1961) 1 All NLR 352

¹²⁹ (2004)11 NWLR. This was an appeal reported as *Mojekwu v. Mojekwu* (1997) 7 NWLR.

decision was also taken by the Supreme Court in the case of *Akinnubi v. Akinnubi*¹³⁰, where it was held inter alia as follows:

“It is a well settled rule of native law and custom of the Yoruba that a wife could not inherit her husband property. Indeed, under Yoruba Customary Law, a widow under intestacy is regarded as a part of the estate of her deceased husband to be administered or inherited by the deceased family”.

The above decisions of the Supreme Court were vehemently criticized as unfortunate and that the Custom is too old and therefore had to change¹³¹. The proactive judicial stance of the Court of Appeal in *Mojekwu v. Mojekwu*¹³² came to bear with the Supreme Court decision in *Ukeje v. Ukeje*¹³³. This case afforded the Supreme Court an opportunity to revisit the age long constitutional issue on women’s right to freedom from discrimination to property. The matter came up again whether the Igbo native Law and custom that disentitles female from sharing in her late father’s estate is in conflict with section 42 (1) (a), (2) of the 1999 Constitution. The Supreme Court while affirming the decisions of both the High Court and Court of Appeal, ruled that the said Igbo native Law and Custom that disentitles female from sharing in their late father’s property is discrimination and is void as it conflicts section 42 (1) and (2) of the

¹³⁰ (1997) 2 NWLR P. 144

¹³¹ B. Akinrimisi; Women’s inheritance right-The Nigerian situation and options available at all levels, being a paper presented at a one day workshop on Women and the right to inheritance in Nigeria; P. 7 shelter Rights initiative, 2001

¹³² (1997) 7 NWLR

¹³³ *Ukeje v Ukeje* (2001) 27 WRN.

Constitution¹³⁴. With this decision of the Supreme Court, the status of a widow under such native Law and customs could be said to have been reversed. Conversely, whether distribution in line with the rules of succession of the deceased is applicable to a widow who married under Statutory marriage (i.e Marriage Act)? The Armed Forces Act is silent on this. However, the provisions of the Marriage Act may prevail over the Armed Forces Act considering section 115 (4) of the marriage Act which provides that in case of inconsistency between the Marriage Act and any other law, the Marriage Act “shall prevail and that law shall be void to the extent of the inconsistency”.

4.4.1.2 A Child of a Deceased Personnel.

Just like in the above case, any money or Personal Property claimed or delivered to the child of deceased Personnel is subject to distribution in accordance with the customary law of the locality of the deceased. Under the customary law therefore, the child receives in representative capacity on behalf of other existing heirs. It should be pointed at this junction that, even though the distribution of the intestate estate of the deceased is to be distributed in accordance with customary law, the determination of illegitimacy of any child under customary law can hardly be successful pursuant to section 42 (2) of the

¹³⁴ 1999 Constitution of Federal Republic of Nigeria.

1999 constitution of the Federal Republic of Nigeria which provides thus: “No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth”. Hence, no child will be deprived of any shares from the estate of his deceased parent under Customary Law by reason of illegitimacy.

4.4.1.3 Near Relative of the Deceased

Near Relative are relations of the deceased personnel other than children and spouses in the customary law of succession¹³⁵. The rights of these relations to inherit arises as a general rule, only if the deceased was not survived by children¹³⁶. Hence where any money or Personal Property of a deceased who is survived by a child was delivered to a relative. The relative (claimant) in this regard, shall be presumed to have acted in representative capacity. Such an intestate estate ought to be delivered by him to the appropriate quarter for onward distribution according to custom of the deceased or Islamic law, if the deceased is a muslim¹³⁷.

¹³⁵Sagay, op. cit. p. 273

¹³⁶ Ibid

¹³⁷ Section 277 (1) and (3) of the Armed Forces Act.

4.4.2 The Intricacies of NOK/Personal Representative Appointment.

The first intricacy in the appointment of NOK/Personal Representation is that, most service Personnel at the point of enlistment or commission are unmarried and therefore will be left with the only option of appointing either their brothers, uncles or parents as their NOK/Personal representative. Though there is a provision for the change of NOK under the Armed Forces Act but the implementation of such provision is somehow neglected by some Personnel. Even those who were able to change their NOK to their children and spouses, the most fundamental question is whether such persons as appointed Will discharge the trust as reposed on them by the deceased Personnel. Most often, Personnel appoints NOK on the moral believe that such persons will honestly uphold the trust entrusted on them since they are close to them by blood or marriage, not minding the human factors. These days, as a result of selfishness and other vices, brothers are no longer each other's keepers and there is so much stress that everyone looks out for himself without caring for the overall good of the family. The expectation of the deceased Personnel bounty leads to unnecessary feuds between the heirs of the deceased hence the need to prevent this and to ensure that each of the heirs get his respective shares. This presupposes the need for the appointment of personal representative who will eventually represent the deceased service personnel in collection and distribution

of the deceased intestate estate. To achieve this, Service personnel should not make an appointment into such position with levity. Service Personnel must have faith and trust in whosoever he chooses. He must have recognized certain abilities and traits in those he is appointing. He must also feel satisfied that he has made the right choice without any doubt whatsoever about the integrity, honesty, loyalty and steadfastness of those appointed. To do otherwise would be disastrous, as his immediate family will end up without the resources to cater for their basic needs.

The second intricacy regarding the appointment of Personal representative is that of age of a Personal representative. The provision which provide for the appointment of Personal representative under the Armed Forces Act was silent on the circumstance of underaged persons. Consequently, some service personnel appoints their child who is underaged out of sheer sentiment including affection owing to the erroneous believe that a Personal representative is the beneficiary of the estate of a deceased service personnel. The implication of this, is that, in the event the service Personnel who appoints an underaged child died shortly after such appointment, the person so appointed may lack the capacity or ability to effect the administrative processes expected of a Personal representative.

4.4.3 Duties of a Personal Representative under the Armed Forces Act

Unlike in a Will where disposition of property involves all the estate of the testator including those possessed outside military services, an intestate estate disposition under the Armed Forces Act is limited to any pay, gratuity or other allowance or any Personal Property or money entitled by an intestate deceased service Personnel.¹³⁸ It follows therefore that, a Personal representative's duty under the Act is limited to the aforementioned entitlements. Secondly, unlike in a will where a Personal representative personally executes the wills based on the wishes of the testator, a Personal representative of an intestate estate under the Armed Forces cannot personally execute such duties since execution or distribution of an intestate estate under the Act is to be made according to the rules of succession of the tribe of the deceased or in accordance with Islamic Law, if the deceased is a muslim; and in both circumstances distribution is usually made by a body of persons recognized by the individual custom to do so or by a Customary or Sharia Court with Jurisdiction as such.

In view of the above, the duties of a Personal representative of an intestate estate under the Act may include the following;

- To ensure that all the necessary documents to be processed in respect of the deceased service Personnel are processed accordingly.

¹³⁸ Ibid 275 (3)

- To keep a constant touch with the unit of the deceased Personnel on matters of the deceased family and briefing the family accordingly.
- To receive or collect any due entitlement of the deceased Personnel when paid or delivered to him by the appropriate authority.
- To present such entitlements to the family of the deceased and the Appropriate body or Institution for onward distribution to the deceased heirs in accordance with the custom or tradition of the deceased personnel.

4.5 Determination of Heirs under the Armed Forces Act.

Generally, the division and distribution of the estate are usually made within the heirs of the deceased. An heir is a person who, under the laws of intestacy, is entitled to receive an intestate decedent's property¹³⁹. Under the Armed Forces Act¹⁴⁰ the determination of who is an heir is subject to the rules of succession of the tribe to which a deceased personnel belongs or in accordance with Islamic law, if the deceased was a Muslim.¹⁴¹ Rules of succession of a tribe invariably connotes the customs of the tribe of a serving personnel¹⁴² or deceased service personnel (as the case may be). The rules of succession under customary systems in Nigeria are as varied as the ethnic groups themselves. Determination of an heir under the

¹³⁹ Garner, op. cit p. 70

¹⁴⁰ (Cap A20) LFN 2004

¹⁴¹ Ibid, Section 277 (2) and (3)

¹⁴² Applicable when Complying to Section 275 (1) (b) AFA

customary systems depends on the customs of a particular ethnic group. For instance, in Lagos and Western Nigeria, under the modern Yoruba Customary Law, children are considered as the heirs of their deceased father and there is no distinction between male and female in the distribution of their father's estate¹⁴³. However, there are some minor variations in some parts of the old West. Thus in Abeokuta the custom is that on a man's death, two-thirds of his property go to his children and one-third go to his brothers and sisters¹⁴⁴. While in the former Eastern Nigeria, four main types of succession within the dominant patrilineal system were identified as listed hereunder¹⁴⁵. It is pertinent to note that the under listed previous system of succession are no longer the practice in Nigeria with the recent case of *Mojekwu v Mojekwu*¹⁴⁶ and *Ukeje v Ukeje*¹⁴⁷. The Courts while ensuring the right of woman to inherit also declared that native law and custom that disentitles female from sharing in their late father's property as discriminatory and void as its conflicts with section 42 (1) and (2) of the 1999 Constitution of Federal Republic of Nigeria.

¹⁴³Sagay, Op.Cit.p263

¹⁴⁴ Ibid

¹⁴⁵ Ibid, P. 264

¹⁴⁶ Supra

¹⁴⁷ Supra

- (v) Amongst the Ibo, Ibibio, Annang, Oron, Obanliko, Abua and Ogoni, the deceased's property is shared by sons, brothers, fathers, uncles, i.e male relations, excluding daughters, wives, sisters, mother.¹⁴⁸
- (vi) Amongst the Ijaw, the form of marriage entered into by a woman determines the family to which her children succeed. The children of an Igwa marriage, involving lesser expenses and a smaller bride price, belong to and have succession rights in their mother's family. On the other hand, the children of an Iya marriage, involving greater, expenses and a higher bride price belong to and have succession rights in their father's family. For other purposes the line of succession under (II) is the same as in (1).¹⁴⁹
- (vii) Amongst the Efik and Umon, both male and female children have rights of succession to their father's property.¹⁵⁰
- (viii) While amongst the Boki, the children are excluded from the line of succession. Rather it is the father, eldest brother, uncle etc, who succeed. The wife and sisters are also excluded.¹⁵¹

It is worthy to note that the above is not an exhaustive list of the customs of the various ethnic groups in Nigeria. Unlike the practice under the customary

¹⁴⁸ Ibid

¹⁴⁹ Sagay, op. cit p. 264

¹⁵⁰ Ibid

¹⁵¹ Ibid

systems, Islamic Law have a classified classes of heirs. The determination of heirs under the Islamic Law depends on three principal classes of heirs as classified by the majority of Muslim Jurists¹⁵². These include:

- d. Qur'anic Heirs - (Called Sharers)
- e. Agnatic Heirs - (Called Residuaries)
- f. Uterine Heirs - (Called Distant Kindred)

It is pertinent to note that, the property of the deceased goes in the first instance to the Qur'anic heirs, if the estate is not exhausted by them, or in their absence, it goes to the agnatic heirs. And finally, in the absence of heirs of classes (a) and (b), the property is distributed among the uterine heirs¹⁵³.

4.5.1 Qur'anic Heirs

Qur'anic heirs consist of certain close relations of the deceased to whom a specific share is allowed in the Qur'an. These include four male and eight female sub-classes. The male sharers are:- the husband, the father, true grandfather how high so ever, and the uterine brother. The female sharers are:- the wife, the mother, the true grandmother, daughter, the son's daughter, how low so ever, the germane sister, i.e (full sister), the uterine sister, (of the same mother but not father) and the consanguine sister (of the same father). Three out

¹⁵²Gurin, A.M., (1999) *An Introduction to Islamic Law of succession*, Joda press Ltd, Zaria p. 58

¹⁵³ Ibid

of these sharers, i.e the granddaughter, grandfather and grandmother were not in fact specifically mentioned in the Qur'an as legal heirs; but rather they were added to the list of '*ahl al-Fara'id*' through the doctrine of *Qiyas (analogy)*¹⁵⁴.

4.5.2 Agnatic Heirs (Residuaries)

The second principal class of heirs consists of the agnates (residuaries) or *asabat*. They receive what is left, if any, after the sharers of the first principal class (*ahl al-Fara'id*); the whole property in default of any sharer, and nothing if the sharers exhaust the entire property. An interesting subclass of agnates is that of the sons. The son is not one of the strictly Qur'anic sharers; but he is a special agnate who cannot be excluded by any other heir of any class, and who exclude other heirs, agnates or excludable sharers. All residuaries are related to the deceased through male issues. The uterine brother and sister are related to the deceased through a female, that is, the mother, and they do not therefore find a place in the list of residuaries.¹⁵⁵

4.5.3 Uterine heirs (Distant Kindred)

The third principal class of heirs consists of uterine heirs (*dhawularham*). A uterine heir is any relative who is neither Qur'anic sharer nor an agnate, e.g the daughter's child: Uterine heirs succeed in default of Qur'anic sharers and

¹⁵⁴ Ibid

¹⁵⁵ Ibid

residaaries, and preference is given to mutual patron and the public treasury (Bait-al-Mal).¹⁵⁶

4.6 Mode of Distribution under the Armed Forces Act

Fundamentally, the mode of distribution of an intestate estate under the Act depends on either the custom of a deceased Personnel if he is a non-muslim or Religion of a deceased Personnel if he is a muslim¹⁵⁷. Consequently, where the deceased was a muslim, the distribution of his estate if he survived by Qur'anic heirs may be carried out in the following mode¹⁵⁸:

4.6.1 One Half

Among the Qur'anic heirs listed above, some of them will get one half of the deceased's estate and these are:-

- i. A husband where the wife left no child
- ii. A daughter if she is alone or sons daughter if she is alone in the absence of a son, daughter and a son's son.
- iii. A sister either germane or consanguine if she is alone and in the absence of germane or consanguine brother, father, son and son's son how low so ever.¹⁵⁹

¹⁵⁶ Ibid

¹⁵⁷ Ibid section 277 (2) and (3) of the Armed Forces Act.

¹⁵⁸ Gurin, op.cit.p.60-62

¹⁵⁹ Ibid

4.6.2 One Quarter

Two out of the Qur'anic heirs get one quarter of the estate. These are:-

- i. A husband if the wife had left a child
- ii. A wife if the husband left no child.¹⁶⁰

4.6.3 One Eighth

Only one Qur'anic heir will get one eighth of the estate and that is a wife where the husband leaves a child. Even if the wives are four they share the one eighth of the estate amongst themselves.¹⁶¹

4.6.4 Two-Thirds

Four of the Qur'anic heirs get two thirds of the estate and these are:-

- i. Two or more daughters where the deceased left no son.
- ii. Two or more son's daughters, if the deceased left no son or daughter or son's son.
- iii. Germane sisters, two or more, where the deceased left no father, no child and germane brother.
- iv. Consanguine sisters, two or more, where the deceased left no father, no child, no germane brother or sister and no consanguine brother.¹⁶²

4.6.5 One-Third

There are three heirs who get one third of an estate:-

¹⁶⁰ Ibid

¹⁶¹ Ibid

¹⁶² Ibid

- i. A mother if the deceased left no child.
- ii. Uterine brothers or sisters when they number more than one. They share the one third equally amongst themselves, if deceased person left no father, grandfather or a child.¹⁶³
- iii. A grandfather is also placed into this category if he is sharing with other legal heirs excluding the sisters.¹⁶⁴

4.6.6 One-Sixth

There are seven heirs who get one-sixth of an estate and these are:-

- i. Mother, where the deceased left a child, or where he leaves more than one brother or sister, whether they are germane, consanguine or uterines and whether they are inheriting or not they will reduce the mother's share from one-third to one-sixth.
- ii. A paternal or maternal grand-mother in the absence of a mother.
- iii. A father where the deceased left a child
- iv. A Paternal grandfather in the absence of a father.
- v. A uterine brother or sister, in the absence of a child, father or grandfather.
- vi. A son's daughter, in the presence of one daughter who will take her Qur'anic share of one-half and the son's daughter will get one-sixth, to complete the total share of the females i.e two-thirds.

¹⁶³ Ibid

¹⁶⁴ Abdulrashid Y., & Okoh, S.E.E., *Succession under Islamic Law*, Malthouse Press Limited, Lagos (2011) p. 43

- vii. A consanguine sister when she is inheriting with one germane sister who will take her Qur'anic share of $\frac{1}{2}$ and the consanguine sister will take $\frac{1}{6}$ to complete the total share of $\frac{2}{3}$.¹⁶⁵

In the case of a non-muslim, the distribution of the deceased intestate estate is to be made according to the rules of succession of the tribe to which the deceased belong¹⁶⁶. Invariably, rules of succession of the tribe of the deceased connotes the customary law of succession applicable in the locality of the deceased. It is equally important to note that customary systems in Nigeria varied; hence there are various concept to the rules of succession under customary laws. However, in the system of customary law in which the children succeed to their parent's estate to the exclusion of other relations, there are basically two modes of distribution,¹⁶⁷ (i) *per stirpes*, known amongst the Yoruba as *Idi-igi* and (ii) *per person*, known as *Ori-Ojori* amongst the Yoruba. Under the *Idi-igi* system, the deceased father's property is shared into equal portions in accordance with the number of wives who had children by him.¹⁶⁸ The children of each wife (branch) then divide their portion as they like between themselves. This remains the basic mode of distribution in Yoruba customary law.¹⁶⁹ It is only when there is a dispute between the children about the mode of distribution, that the head of family is

¹⁶⁵Gurin, Op. cit p. 58

¹⁶⁶ Section 277 (1) of the Armed Forces Act

¹⁶⁷ Ibid

¹⁶⁸ Ibid

¹⁶⁹ Ibid

entitled to decide whether or not to adopt the alternative mode of distribution, that is, *Ori-Ojori*, the division of the estate amongst all the children in equal shares¹⁷⁰. It should be noted that the *Idi-igi* system is an exclusive Yoruba system. Other customary law systems share property according to the number of children and not according to the number of wives. Any variations that may exist are based either on seniority (the eldest getting larger portions) or according to sex, (males getting larger portions than females)¹⁷¹.

4.7 Do Personal Representatives under the Armed Forces Act need a Grant of Representation or Letter of Administration?

First of all, a grant of representation is an order of the Court which confirms (in the case of an executor) or confers (in the case of an administrator) the authority of the Personal representative to administer the estate of the deceased, and which indicates the terms on which the estate is to be administered. In the case of an uncontested Will, the process of obtaining a grant is administrative and merely involves the lodging of certain documents as required by law at the probate registry of the High Court. There are broadly three types of grant:

- Probate, which is issued when there is a valid Will and one or more executors have been appointed by the testator.

¹⁷⁰Sagay, op.cit.p.270

¹⁷¹ Ibid p.271

- Administration with Will annexed which is issued when there is a Will, but no executor is appointed under the Will, or even if one or more is appointed none of them has accepted the appointment or survived the testator.
- Administration which is issued where the deceased died intestate or where his Will was invalid¹⁷².

As noted earlier, the Personal representative referred in this paragraph, is the one appointed by service Personnel under the Armed Forces Act by virtue of section 275 (1) of the Act. This does not include a Personal representative appointed by a Will made under Armed Forces Act¹⁷³. It is pertinent to note that, the circumstance to be discussed here is the intestate circumstance under the Armed Forces Act. Notably, it can be recalled that the intestate circumstance under the Armed Forces Act differs with the intestate circumstance under the intestate Estate Act of 1890¹⁷⁴. While the later consist of non-Customary Succession procedures, the former though a statute, but incorporated and adopted customary succession procedure where distribution of the intestate estate of deceased military personnel is to be carried out according to the rules of succession of the tribe to which the deceased belonged or in accordance with Islamic Law where the

¹⁷²Sagay, I., op.citp. 332-333

¹⁷³ Section 276 (1)

¹⁷⁴The Law is an English law of General Application applicable in Nigeria by virtue of section 16 of the Eastern High Court Laws and Section 33 of the Northern High Court Laws respectively.

deceased was a muslim¹⁷⁵. Looking at these provisions critically, it could be rightly concluded that, the status of a Personal representative appointed under the Armed Forces Act is unlike the status of a Personal representative in a Will or non-Customary succession procedures. This invariably connotes that a Personal representative under the Armed Forces Act cannot deal with the intestate property of the deceased Personnel outrightly contrary to the modes of distribution as enshrine under the various customs of the deceased personnel or Islamic law where the deceased was a muslim. Distribution under either of these procedures may be made by Court or a recognized body or institution depending on the customs of each tribe hence, where such distribution by recognized body or institution was carried out peacefully by a particularly custom and all the designated heirs are given their entitlements based on the custom, grant of representation will not apply in this circumstance. However, where the intestate estate was delivered to the Court for distribution pursuant to section 275 (1) (b) and (3) of the Armed Forces Act or dragged to Court by a contested heir of the deceased service Personnel, then, grant of representation may be applicable in this circumstance.

Secondly, a letter of Administration is “a formal document issued by a probate Court to appoint the administrator of an estate”¹⁷⁶. Fundamentally, a Personal representative appointed by virtue of section 275 (1) (a) of the Armed

¹⁷⁵ Section 275 (1) (b) and 277 (1) and (3) of the Armed Forces Act (cap A20) Laws of the Federation of Nigeria 2004

¹⁷⁶ Garner, Op.cit p. 925

Forces Act¹⁷⁷ do not need letter of administration before any money or Personal Property of the deceased (that appointed him) will be delivered to him. Any evidence of his initial appointment suffice for his representative capacity. However, where the appointed Personal representative died shortly after the demise of the deceased Personnel, any closest blood relation of the deceased may apply for a letter of administration for such consideration.

4.8 Jurisdiction of Sharia and Customary Courts on Succession Matters

Sharia Law is a unique system under the Nigerian Legal System. By virtue of Section 277 of the 1999 constitution, particularly Section 277 (c), a claim of inheritance of property subject of Islamic Personal Law is not within the Jurisdiction of the High Court. Only the Sharia Court of a state has the powers or Jurisdiction to entertain matters falling within the adversarial ambit of the Islamic Personal Law. It has been established in *Usman v. Alabi*¹⁷⁸ that: “the High Court in Nigeria, with its glaring unlimited Jurisdiction is not saddled with the powers or Jurisdiction to hear and determine issues of Islamic Law”.

The Jurisdiction of Sharia Court as conferred by Section 277 (c) of the Constitution of the Federal Republic of Nigeria reads thus:

¹⁷⁷ (Cap A20) LFN 2004)

¹⁷⁸ (2005) 23 WRN 187

(1) The Sharia Court of Appeal of a state shall, in addition to such other Jurisdiction as may be conferred upon it by the law of the state, exercise such appellate and supervisory Jurisdiction in civil proceedings involving questions of Islamic Personal Law which the Court is competent to decide in accordance with the provisions of subsection (2) of this section.

(2) For the purpose of subsection (1) of this Section, the Sharia Court of Appeal shall be competent to decide -

(c) any question of Islamic Personal Law regarding a wakf, gift, will or succession where the endower, donor, testator or deceased person is a muslim;

While the Jurisdiction of Customary Courts as conferred by Section 282 (1) and (2) of the constitution of the Federal Republic of Nigeria reads thus:

(1) A Customary Court of Appeal of a state shall exercise appellate and supervisory Jurisdiction in civil proceedings involving questions of Customary Law.

(2) For the purpose of this section, a Customary Court of Appeal of a state shall exercise such Jurisdiction and decide such questions as may

be prescribed by the House of Assembly of the State for which it is established.

In view of the above constitutional provisions, it is quite clear that any dispute involving money or Personal Property of a deceased muslim Personnel under the Armed Forces Act may be referred to the Sharia Court for adjudication while dispute involving money or Personal Property of a deceased (non-muslim) Personnel may be referred to the Customary Court of the deceased locality.

4.11 Conclusion

This chapter examined the Administration of Estate of Deceased Military Personnel under the Armed Forces Act. The chapter was restricted to some key important issues in the administration of Estate, hence, the following issues were discussed: the appointment and duties of an executor and NOK/Personal representative under the Act, legal issues on the appointment of NOK, duties of Personal representatives and claimants under the Act, the determination of heirs of deceased service personnel under the Act, the modes of distribution of an intestate estate under the Act, Personal representative relativity with “Grant of Representative” and letters of administration of estate; and finally the chapter highlighted on the Jurisdiction of Sharia and Customary Courts on succession matters.

CHAPTER FIVE

SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.1 Summary

This research examined the nature of testate and intestate succession under the Armed Forces Act and discussed critically on the legal status and duties of Personal Representatives under the testate and intestate succession. The research observed that the basic issues under the Armed Forces Act regarding succession as it relates to Next of Kin/Personal Representative whom the estate of a deceased Personnel will be delivered to, upon the demise of the Service Personnel, was that, the status and duties of such Personal Representative were not expressly stipulated under the Armed Forces Act. (The Act is silent on the status and what duties are expected of a Personal Representative when such estate is delivered to him/her). These shortcomings in many instances lead to the erroneous believe that a Personal Representative of a deceased service Personnel is the sole beneficiary of the estate of the deceased. Such erroneous believe was the cause of conflict between the NOKs and the heirs of deceased Personnel. These conflicts were the cause of the series of petitions by the family members of deceased personnel against NOK/Personal Representatives as narrated in chapter one. The research was divided into five chapters.

Chapter one dealt with introductory chapter that form the basis of this research work. It introduced the research work, stated the problem, outlined the significance of the research, stated the aims and objective of the research, defined the scope and methodology of the research and reviewed the available literatures in the field.

Chapter two examined Wills generally and Wills under the Armed Forces Act. It outlined the formal requirements of a Will under the Armed Forces Act and discussed other issues involved in making a Will such as: Testamentary Power, Mental Capacity, Appointment of Executors, Revocation of a Will and Functions of Codicils.

Chapter three discussed the nature of intestate succession under the Armed Forces Act, it equally examined the procedures of payment of debts of Deceased Service Personnel, Distribution subject to rights of Creditors and the Constitution of a Fund by an undisposed money belonging to Deceased Personnel. The chapter also juxtaposed the Armed Forces Act and succession under Customary Law and finally analyzed and interpreted data on the perception of some members of the Armed Forces on the status of NOK/Personal Representative.

Chapter four dealt with Administration of estates of deceased military personnel under the Armed Forces Act. Under this, the status and duties of

Personal Representatives under a Will and intestate circumstance was discussed. Thereafter, the determination of heirs of deceased service Personnel and the modes of distribution of an intestate estate under the Act was also discussed and subsequently NOK relativity with “Grant of Representation” and Letters of Administration were highlighted. And finally the Jurisdiction of Sharia and Customary Courts on succession matters were also discussed.

Lastly, chapter five draws the curtain on the entire work. It captured the summary, findings and recommendations.

5.2 Findings

In the course of this research, it was established as follows:

- a. The series of conflicts between some NOK/Personal representatives and family members of deceased personnel were due to the fact that most Army personnel particularly those of rank and file and their families do not know the meaning of personal representative as envisaged by the Armed Force Act (Cap 20) LFN 2004. Consequently, they misconceived the status of NOK as sole beneficiary of deceased personnel estate. This misconception was compounded by the failure of the Armed Forces Act to have expressly

outlined the status and duties of NOK which would have served as a guidance and clear any possible ambiguous circumstance.

- b. The Nigerian Army administrative forms used for appointing or declaring NOK/Personal representative are not like that of Nigerian Airforce which contained informations that will assist (not only) in educating the NOKs on their responsibilities and status but, also in prosecuting NOKs who defaulted by converting the intestate estate to their personal use. Such informations include; NOK Declaration space or paragraph acknowledging or deposing to the fact that he is aware that he is carrying-out representative function and not the sole beneficiary of the estate of Service Personnel, Service Personnel Declaration space or paragraph directing that his estate be administered by customary court according to the customs of his tribe in compliance to section 275 (1) (b) of the Act and finally Service Personnel Declaration space showing the list of heirs/beneficiaries of the Service Personnel.
- c. The release of money, cheques, benefits or entitlements of Deceased Personnel to the NOK/Personal Representatives were made without cognisance to the presence of all the acknowledged heirs or beneficiaries of Deceased Personnel. As a result of this, some

Personal Representatives were reported to have received the entitlement and absconded with it. Before the beneficiaries get to know, the entitlements would have been squandered.

- d. Intestate estate or personal property of deceased service personnel were rarely handed over to Customary Courts for distribution to the heirs of the deceased in line with section 275 (1) (b) of the AFA (Cap A20) LFN 2004.
- e. The provisions of the Armed Force Act regarding the appointment of NOK, NOK duties and the administration of intestate estate were not explicit. It was not clear whether it is the duty of the NOK to distribute the intestate property of deceased personnel or the duties of those responsible to share the property of the deceased in line with his customs.

5.3 Conclusions

The procedure for the administration of estate of deceased military personnel under the Armed Forces Act is two fold i.e testate and intestate procedures. Administration by means of a will is less cumbersome. The terms of distribution in a will are usually explicit. Cases of conflict within a family where a will was made are very rare in the Nigerian Army. However during

the research, it was discovered that administration of estate of deceased military personnel through the intestate procedure was characterized with certain shortcomings in the Nigerian Army; some of these shortcomings include: Duties of personal representative not state in the Armed Forces Act and not known mostly by “Order ranks” and their families, NOK is usually misconceived by some families as a sole beneficiary of deceased personnel estate as a result of ignorance, NOK appointment form was not adequately designed to describe the essence of such appointment, no modalities to prevent abscondment of personal representatives when deceased estate are delivered to NOKs and so on.

The research methodology was basically doctrinal and imperial. Books, Journals and petitions against NOKs were used however one of the challenges encountered during the research was that the research could not reach out the petitioned NOKs to enable the administration of questionnaire to them. Nonetheless, petitioners of the selected petitions against NOKs were reached.

In the course of the research, data for the respondents knowledge on the status of NOK were procured. The respondents are majorly soldiers and their families within 1 Division Nigerian Army. The data were subsequently analysed accordingly. From the analysis, 52.9% were of the view that a next

of kin is the sole beneficiary of property of deceased service personnel, closely followed by 11.8% who were of the view that a next of kin is the only heir of deceased service personnel, while 35.2% were of the view that a next of kin is a representative of deceased personnel. It is from this analysis that, this research concluded by using the assumption method, that most rank and file personnel do not know the status of a personal representative as envisaged by the AFA (Cap A20) LFN 2004. The need for sensitization in this regard can not be over emphasized.

5.4 Recommendations

Owing to the above findings, the research therefore recommended as follows:

- a. The status and duties of a Personnel Representative such as; representing the deceased in all matters of the deceased entitlements and welfare of the deceased family, keeping a constant touch with the unit of the deceased on matters of the deceased family and briefing them accordingly, collecting any entitlements of the deceased Personnel when paid or delivered to him by the appropriate authority and presenting such entitlements to the family of the deceased or appropriate body or institution for onward distribution to the deceased

heirs in accordance with the custom or tradition of the deceased Personnel, should be expressly stipulated in the Armed Forces Act to prevent ambiguous circumstance and also eradicate the erroneous believe that Personal Representative is the sole beneficiary of the intestate estate/Personal Property of deceased Personnel under the Armed Forces Act.

- b. The Nigerian Army NOK/Personal representative declaration or appointment forms should be redesigned like that of the Nigerian Airforce to capture additional informations such as NOK Declaration space or paragraph where NOK will acknowledge or depose to the fact that he is to carry out representative function and not the sole beneficiary of the intestate estate, Service Personnel Declaration space or paragraph directing that his estate be administered by customary court according to the customs of his tribe in compliance to section 275 (1) (b) of the Act and finally, Beneficiaries/Heirs Declaration space where service personnel will be required to enlist his beneficiaries/heirs. This will go a long way in eradicating any possible misconception regarding the appointment of NOK/Personal Representative and also assist in prosecuting NOKs who defaulted or converted the entitlement of Service Personnel to their Personal use.

- c. The release of intestate estate or personal property or any entitlements of a deceased personnel to the NOK/Personal representative should be made in the presence of other heirs or beneficiaries of the deceased personnel. This will create awareness to the entire family of the deceased Personnel and also prevent NOKs abscondement with the entitlements of other heirs.
- d. In conflicts or complicated cases such as the death of both main and alternate Personal representatives, Commanding Officers or any Public Officer authorized as such should deliver the intestate estate of deceased personnel to the customary court (so directed by the deceased during his enlistment) for distribution to the heirs according to the customs of his tribe.
- e. The provisions of the Army Forces Act relating to the administration of estate should be amended to expressly outline the duties of personal representatives/NOKs and the Nigerian Army should also established a department which should be called NOK sensitization department which will be responsible for sensitizing family members of the Armed Forces on the essence of personal representative. This will prevent the series of conflict among the family members and the appointed NOKs.

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APPENDIX

QUESTIONNAIRE

Dear Respondent,

I am Major AM Zangi (N/12319) of the Nigerian Army School of Military Police Basawa, Zaria. I am presently a student in Ahmadu Bello University, Zaria. I am undertaking a research as part of the pre-requisite for the completion of my programme (Master of Laws-LL.M). The topic of the research is “**An Appraisal of the Administration of Estate of a Deceased Military Personnel under the Nigerian Military Law**”. Part of the objective of the research is to examine the legal status and duties of a Personal representative/Next-of-Kin (NOK) under the testate and intestate succession. Please, note that the information given will be used strictly for research purpose and all the response will be treated with utmost confidentiality therefore, kindly answer the questions with all sincerity and tick or fill as appropriate. Please tick correctly (✓) where applicable.

SECTION A: BIO-DATA OF RESPONDENT

1. **Age:** a. 25-30 b. 31-35 c. 35-40 d. 40 and above
2. **Sex:** a. Male b. Female
3. **Marital Status:** a. Married b. Single c. Divorce d. Separated
4. **Educational Status:** a. Secondary School Certificate b. Dip/NCE
c. First Degree/HND d. Post Graduate
5. **Religion:** a. Christian b. Islam c. Paganism None of the above
6. **Length of Service:** a. Below 5 years b. 5-10 years
c. 11-20years d. 21-35years
7. **Rank Category:** a. Non-Commission Officer b. Senior Non-Commission Officer
c. Junior Officer d. Senior Officer
8. **Corps/Department (Specify)**.....

SECTION B: RESPONDENT KNOWLEDGE ON THE STATUS OF NEXT OF KIN (NOK)

9. Have you declared an NOK during your enlistment into the Nigerian Army?
a. Yes b. No
10. If No, Why?.....
11. Have you ever changed your NOK?
a. Yes b. No
12. If yes, Why?.....
13. What is the age category of your NOK?
a. Below 12 years b. Below 18 years c. Below 5 years d. Above 18 years
14. Who did you appoint as NOK?
a. Your Father b. Your brother c. Your Wife d. Your son
15. If you may suggest, the status of NOK should be best considered for:
a. Sole beneficiary b. The only heir c. A representative d. None of the above

16. Why do you think most Commanding Officers prefer delivering the estate of a deceased Military Personnel directly to an NOK even if the NOK is an underaged child?
- a. Because the Commanding Officers believed that the Deceased Service Personnel preferred their estate to be utilized by their selected NOK
- b. Because the Commanding Officers believed by such appointment the Deceased Service Personnel intended the NOK to be the person who will distribute the estate.
- c. Because the law required them to act as such d. All of the above
17. Are you aware that a Commanding Officer may refer the estate of a deceased Military Personnel to a suitable court or traditional Institution for distribution, depending on each case:
- a. Yes b. No

SECTION C: RESPONDENT KNOWLEDGE ON THE DUTIES OF NEXT OF KIN (NOK)

18. When do you think an NOK is expected to commence his/her duties?
- a. After his/her appointment b. After the death of the deceased
- c. None of the above
19. Which of the following do you think may be the duties of an NOK?
- a. To collect all personal property of the deceased personnel solely for his own benefit
- b. To collect and share all personal property of the deceased personnel to eligible heirs
- c. To do all the necessary things expected of a representative under the Act
- d. None of the above
20. Which of the following fact do you think is not true about the duties of NOK under the Armed Forces Act?
- a. The duties are not expressly stipulated under the Armed Forces Act
- b. The duties are the presumed duties of a Personal representative in the circumstance of the Armed Forces Act. c. The duties are clearly stated in the Armed Forces Act and other Military regulations.
- d. The duties are somehow similar to the duties of a trustee

21. Have you ever witness any breach of duty (i.e) Misapplication of the Personal property of a deceased personnel by an NOK?

a. Yes b. No

22. If yes, what was the nature of the misapplication?

a. Received the Personal Property and absconded from the Family

b. Received the Personal Property and assume self ownership of the property

c. Received the Personal Property and deprived other heirs from their entitlement therefrom.

d. None of the above

23. What will you suggest, regarding the delivery of the Personal Property of a deceased to NOK?

a. Personal Property should be delivered to NOK a long side with the family of the deceased.

b. Personal Property should be delivered to the Court or other designated institution for distribution where there is foreseeable problem.

c. Personal Property should be directly handed to the NOK as stipulated under the Armed Forces Act

d. Personal Property should be shared by the Commanding Officer of the unit concern.

SECTION D: RESPONDENT KNOWLEDGE ON THE CIRCUMSTANCE OF INTESTATE SUCCESSION UNDER THE ARMED FORCES ACT

24. In which circumstance do you think that the Commanding Officer of your unit is said to have the power to determine who is the claimant of Personal Property of a deceased service personnel?

a. Where the deceased died in service without making a valid Will

b. Where the deceased died in service without appointing an NOK

c. Where the deceased died in service without compliance to A and B above.

d. None of the above

25. Which of the following relationships is not qualification for a claimant of deceased service personnel property?

a. relationship as the widow of the deceased b. relationship as the closest fiancé of the deceased

c. Relationship as the child of the deceased. d. Relationship as the near relative of the deceased.

26. Which of the following rules/laws applies to a deceased service personnel who is a non-Muslim and who died intestate?

a. Army Laws b. 1999 Constitution of the Federal Republic of Nigeria.

c. Rules of succession of the tribe to which the deceased belonged d. Barracks Laws

27. Which of the following rules/laws applies to a deceased service personnel who is a Muslim and who died intestate?

a. Army Laws b. Barracks Laws c. Islamic Laws d. Constitutional Laws

28. Rules of succession of the deceased personnel signifies what?

a. Rules of the language of the deceased b. Military custom and tradition

c. Custom and tradition of the deceased home town d. Rule of Law.

29. In the event that a service Personnel died intestate and without appointing NOK, who among the following do you consider as the rightful beneficiaries of the deceased estate?

a. Only the widow “claimant” of the deceased personnel

b. Only the child “claimant” of the deceased personnel

c. All the heirs of the deceased personnel

d. None of the above.

Thank you