

Responsibility of the person in charge of the Waqf

Shaykh Aboo `Abd-al-Mu`iz `Alee Farkous al-Qoobee

Article taken and slightly adapted from: ferkous.com

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

In the name of Allaah, the Most Merciful, the Bestower of Mercy

About the responsibility of the person in charge of the Waqf (religious endowment) and its permitted or prohibited changes

All praise is due to Allaah, the Lord of the Worlds. Peace and blessing be upon whom Allaah sent as a mercy to the Worlds, upon his Family, his Companions and his Brothers till the Day of Resurrection.

Certainly, Sharee'ah incites people to make Waqf and recommends it. Sharee'ah, also, considers it as a way to get nearer to Allaah. By making Waqf, the believer will get a part of the reward in his life, and the good deeds that result from it will be recorded in his favour after his death, because it is a part of [the good] that he collected and for which he strived. It is authentically reported that the Prophet ﷺ says: "**When a person dies, all his [good] deeds come to an end except three: ongoing charity, beneficial knowledge and a righteous child who will pray for him.**"¹ However, this hadeeth does not oppose the verse in which Allaah عز وجلّ says:

وَأَنْ لَّيْسَ لِلْإِنْسَانِ إِلَّا مَا سَعَى

[And that there is not for man except that [good] for which he strives]²,

for either his son or the knowledge that he left or the ongoing charity that he made are part of [the good] for which he strived.

These good deeds are not limited to those mentioned in the hadeeth. These ones are not but examples of several other good qualities and different kinds of devotional acts. The following hadeeth attests this meaning; the Prophet ﷺ says: "**The good deeds that will reach the believer after his death are:**

- knowledge which he learned and then spread;
- a righteous son whom he leaves behind;
- a copy of the Qur'aan that he leaves as a legacy;
- a mosque that he built;
- a house that he built for wayfarers;
- a canal that he dug;
- or charity that he gave from his money during his lifetime when he was in good health.

¹ Reported by At-Tirmidhee, chapter of "Rulings" concerning Waqf (hadeeth 1376) according to Aboo Hurayrah رضي الله عنه. This hadeeth is judged authentic by Al-Albaanee in Saheeh Al-Jaami` (hadeeth 793) and in Al-Irwaa' (hadeeth 1580).

² Soorah an-Najm [53:39]

Responsibility of the person in charge of the Waqf

These deeds will reach him after his death."³ And till nowadays, [members of] our community still make Waqf from their money.

In fact, the person who makes Waqf is allowed to use it, if it is a designated part from his steady property given to charity as: mosques, schools where we teach the Qur'aan, copies of the Qur'aan and books that contain the beneficial knowledge. In this case, we should fulfil his conditions, unless they go against the Sharee'ah's prescriptions; the Prophet ﷺ says: **"The Muslims should abide by their conditions, except a condition that makes a licit thing illicit or makes an illicit thing licit."**⁴. He says also: **"Any condition that is not in Allaah's Book is invalid..."**⁵.

If the Waqf is a mosque, it is the governor who should manage it or his substitute. Nevertheless, he is not allowed to use this Waqf, be it by selling it, granting it, bequeathing it or by any other way of transferring [goods], seeing that the Prophet ﷺ said to `Umar about the Waqf: **"If you wish you can keep the original property as a Waqf and give in charity from it (from what it produces)."** So `Umar gave it in charity, on the condition that the land would neither be sold nor given as a present nor bequeathed."⁶.

All this is taken into account if the Waqf has not become completely useless, like the case of a mosque which has fallen into disrepair. In such a case, it is permitted to change it for the predominant interest. We can sell it and use the money that it brings to build another similar to it, that is to say another mosque that will be more beneficial to the people of the country. Moreover, if its sale brings more money than what is needed, the surplus will be spent on another mosque, because when it is spent on something similar, its benefit will be put in the same field in which the Waqf has been set up.

To confirm this meaning, Ibn Taymeeyah answered a question about the Waqf surplus which exceeds the requirements, by saying that: "It should be spent in the same domain in which the Waqf has been set up. The mosque, for instance, if it brings surplus money which is in excess of what is required, it should be spent on another mosque, because the person

³ Reported by Ibn Maajah in the "Introduction" concerning the reward of who teaches people the good (the knowledge) (hadeeth 242) and by Ibn Khuzaymah in As-Saheeh (hadeeth 2490) according to Aboo Hurayrah رضى الله عنه. This hadeeth is judged authentic by Al-Albaanee in Saheeh Al-Jaami` (hadeeth 2231).

⁴ Reported by At-Tirmidhee, chapter of "Rulings" concerning what is reported from the Prophet ﷺ regarding the reconciliation between people (hadeeth 1352) from the hadeeth of Katheer Ibn `Abdullaah Ibn `Amr Ibn `Awf according to his father, according to his grandfather رضى الله عنه. This hadeeth is judged authentic by Al-Albaanee in Al-Irwaa' (hadeeth 1303).

⁵ Reported, in these words, by An-Nasaa'ee, chapter of "Divorce" concerning the choice made by the slave woman to set herself free whereas his husband is [still] a slave (hadeeth 3451) and by Ibn Maajah, chapter of "enfranchisement" concerning the slave who wants to set himself free on approval (hadeeth 2521) from the hadeeth of `A'ishah رضى الله عنها. It is also reported by Al-Bukhaaree, chapter of "Sellings" concerning: if a person imposes unlawful conditions in selling (hadeeth 2168) and by Muslim, chapter of "Divorce" in the following words: "Every condition that does not exist in the Book of Allaah (Qur'aan) is invalid."

⁶ Reported by Al-Bukhaaree, chapter of "Wills" concerning: how to write the Waqf? (hadeeth 2772) according to Ibn `Umar رضى الله عنهما. At-Tirmidhee said when he reported this hadeeth, chapter of "Rulings" concerning Waqf (hadeeth 1375): "This hadeeth is judged Hassan Saheeh (good authentic). Scholars among the companions of the Prophet ﷺ and others did apply this hadeeth, and we do not know any divergence between predecessors among them about the fact that Waqf of lands and other [things] is permissible."

Responsibility of the person in charge of the Waqf

who made the Waqf intended to make it in this domain and they (domains) are similar. If we suppose that the first mosque got damaged and has become useless, we should then spend its amount on another mosque. Likewise, if it brings surplus money that exceeds its requirements, this surplus can neither be spent on it nor be frozen; so, it will be more beneficial to spend it in the same field where the Waqf has been set up, and it will be the nearest way to reach the goal of the person who set it up."⁷ It is also permissible to give the surplus money of the income of the mosque made as a Waqf in charity to needy people. It would rather be obligatory if we know that the Waqf does not last long, because not taking advantage from the Waqf's income is a real mess and waste⁸, and the Prophet ﷺ has, indeed, prevented us from wasting money⁹.

Besides, the Waqf made for charity's sake is left in the care of the person in charge. So, he has to fear Allaah as regards this Waqf. He is also obliged to look after it, and manage in the best way, as much as possible, what is entrusted to him, in order to achieve the objective of the person who made the Waqf to get closer to Allaah عَزَّ وَجَلَّ by doing pious deeds and acts of obedience. Therefore, the person who is in charge of the Waqf is prohibited from modifying a part of it, or taking its benefits to spend them in domains that are in contradiction to the rites of piety.

It is, similarly, prohibited to change the Waqf into disbelievers place of worship, or to construct on it mausoleums and objects of worship, or to bury the dead in the mosques or in its yards, or to spend the Waqf's income on the keepers of mausoleums and funeral monuments or to enlighten, cover and cense these ones. It is also forbidden to take out a part from the Waqf and put on it statues and commemorative or non-commemorative monuments, or set up pictures on the Waqf or on the part taken out, or devote it to amusement and acts of disobedience and other such deeds that go against monotheism or against perfecting it, and oppose obedience and piety, because this is a forbidden change. In fact, helping one another in doing such a thing is included in sin and transgression that we are prohibited to commit; Allaah عَزَّ وَجَلَّ says:

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ

[Help you one another in Al-Birr and At-Taqwaa (virtue, righteousness and piety); but do not help one another in sin and transgression]¹⁰

Our last prayer is all praise is due to Allaah, the Lord of the Worlds. Peace and blessing be upon our Prophet, his Family, his Companions and his Brothers till the Day of Resurrection.

Algiers: Shawwaal 20th, 1432 H. Corresponding to September 18th, 2011 G

⁷ See: Majmoo'Al-Fataawa of Ibn Taymeeyah (31/206).

⁸ See: Al-Mustadrak `Alaa Majmoo'Al-Fataawa of Ibn Qasim (4/108).

⁹ Reported by Al-Bukhaaree, chapter of "Zakaat" concerning the verse in which Allaah عَزَّ وَجَلَّ says: لَا يَسْأَلُونَ النَّاسَ إِلْحَافًا [They do not ask people persistently [or at all]] Soorah al-Baqaraah [2:273] and how much is richness? From the hadeeth of Al-Mugheera Ibn Shu'ba رضي الله عنه.

¹⁰ Soorah al-Maa'idah [5:2]