

## An Overview of Islamic Sharia Issue Regarding Mobile Money Transaction (Mpesa) In the Republic of Kenya

Manswab Mahsen Abdulrahman<sup>1</sup>      Ali. Hemed Awadh<sup>2</sup>

### Abstract

The paper aims to examine the products of mobile money banking services in Kenya using M-pesa (mobile cash money). This study is based on qualitative research methodology which was used to ensure the objectives were answered progressively. The primary data were collected from the interview process together with the analysis of the related documents. Products such as Okoa Jahazi, Betting, Money transfer and M-Shwari were designed on usury (Riba), uncertainty (Gharar), and duplicate payment to mention but few. The above-mentioned products are not based on equity and not comply with Islamic values and principles. Therefore, the viable alternative model of Islamic finance would be useful to all stakeholders and clients mitigating the issue.

**Key words:** Mobile Money, Transaction, Islamic Sharia, Republic of Kenya

### ملخص البحث

تهدف الدراسة إلى مناقشة الخدمات المالية المقدمة عبر شركات الهواتف المحمولة. وقد اتبع الباحث المنهج الوصفي؛ محاولةً للإجابة على أهداف البحث بشكل تدريجي؛ إذ قام الباحث بجمع المعلومات عن طريق المقابلات وتحليل المراجع العلمية ذات صلة بالموضوع. توصل الباحث بأن الخدمات المالية مثل: ( Okoa Jahazi, Betting, Money transfer and M-Shwari) مبنية على الربا، والغرر وازدواجية في دفع الرسوم، والتي تتنافى مع القيم والمبادئ الإسلامية؛ ولأجل هذا اقترح الباحث البدائل الإسلامية؛ مما تعود النفع للزبائن وأصحاب المصالح العامة. **الكلمات المفتاحية:** الهواتف المحمولة، المعاملات، الشريعة الإسلامية، جمهورية كينيا.

### Introduction:

M-pesa means (Mobile Money) and Pesa derived from a Swahili word means cash money hence “mobile cash money” Hence M-pesa is a money transfer system operated by Safaricom, invented more than a decade ago. It enables circulation of money within people through their mobile phones

<sup>1</sup> Manswab Mahsen Abdulrahman, PhD, Lecturer at School of Sharia and Islamic Studies-Umma University-Kenya, email: Manswab83@yahoo.com

<sup>2</sup> Pwani University. School of Humanities and Social Sciences. Department of Philosophy and Religious Studies.

transaction; it allows an exchange of cash for “e-float”, send to other transfer phone users and send back in the form of cash. Mobile money transaction operation in Kenya has greatly contributed to positive growth in the financial sector. Financial inclusion is the core strategy of the company, Safaricom has successfully managed to include and engage millions of the Kenyan population in the financial sector by offering competitive and innovative financial services at hand through the use of mobile phone. These M-pesa services are considered to be amongst the key economic contributors in the country through its immense contributions and impact to the individual’s lives and corporate world as well. The M-PESA service being amongst the products and services offered by Safaricom company, has marked a tremendous growth which has incorporated huge number of customers both nationwide and beyond the borders. Mobile money banking services involves transfer of money from people’s account, purchasing goods through M-pesa like paying bills, salaries. M-pesa program technology has played a big role among people living in rural and urban centers of Kenya. Most of Kenyan citizens have access to cell phones and the paramount element of progressiveness of this technology in the invention of mobile money banking services through M-pesa program services to access financial services. As a result of inventing money banking services, M-pesa has created easy and efficient access to customer services, who face physical and financial challenges with money security. M-pesa is considered as branchless banking services performing banking services without one visiting of any bank branch hence making work easier in accessing financial services. This is regarded as a major achievement of mobile phone technology and has played a big role in national economic development. The above products and others have as well captured the attention of the Muslim community which makes more than 15Million of the Kenyan population. Despite the economic viability of the current products and services offered, there is still some reservation from Muslim clients regarding the Shariah compliance of the products. Therefore, Muslims need unique products and services based on Islamic values and principles.

### **Literature Review and Discussion:**

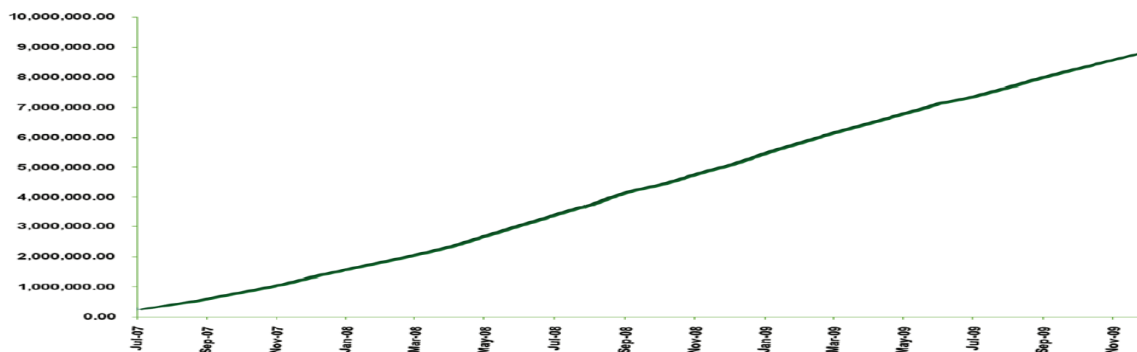
Since the launch of M-pesa application in 2007, it has offered access to banking services and its safe quick and cheap method to provide financial services as it increases economic activities in poor areas hence advancing their living standards and opportunities.<sup>3</sup> It enables one to send money

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<sup>3</sup> Benjamin Ngugi, Matthew pelowski and Javier Gordon Ogembo, M-pesa. *A case study of the critical early Adopter’ Role in the Adoption of Mobile Banking in Kenya.* (Electronic journal of information System in developing, 2010), Vol. 43, 6.

to the client, paying bills, salaries through mobile phones and so no need for one to go to a bank.<sup>4</sup> within a short period of time since M-pesa was inaugurated, transaction has highly grown.

**Exhibit 2: Growth of M-PESA Customer Base**



According to the figure above, it states that 9.0 million are Safaricom registered customers who are active. This corresponds to 60% of the Safaricom's customer base and 23% of the entire population and 40% being adults. Also it indicates that three hundred and twenty million dollars used to transfer money from person to person (p2p) the figure of which is around 10% of Kenya gross domestic product (GDP). It also shows that 650 million dollars used to cash deposit and withdrawal at M-pesa store. 19% of Safaricom airtime purchases are conducted through mobile money (M-pesa).<sup>5</sup>

There are so many factors leading to the success of Mobile money transaction in a short time period. Mainly, because it is highly concerned with unbanked people by making it free registration with no charges. It is attractive and cheap compared to other financial institutions. easy accessible since one can access it through mobile phone to get services in the absence of banking facilities. This makes work easier to rural and urban people. It is available within 24 hours and no specific periodic time compared to other financial institutions whereby they only operate in between specific time. Lack of too much existing laws and regulations made it easier for mobile money transfer since it provides good environment to conduct business, thus not affecting the country financial system.<sup>6</sup> Lastly, M-pesa partners with other financial institutions to provide efficient services for the firms. Example, Western Union partners with M-pesa as an intermediary

<sup>4</sup> Personal Interview, with Esther Ngugi, Safaricom Agent, Kiambu County in Thika, 20/6/2019.

<sup>5</sup> Ignacio Mac and Dan Radcliffe. *Mobile payment go viral: M-pesa in Kenya*. (The Capco Institute Journal of Financial Transformation, 2010), No 32, 3

<sup>6</sup> Ibid, Benjamin Ngugi and others, pp 6-9.

to transfer money internationally,<sup>7</sup> Also partners with commercial banks i.e Cooperative Bank, Kenya Commercial Bank, Barclays Bank, Equity Bank, Family Bank, Post Bank, Consolidated Bank, NIC Bank, Standard Chartered Bank and CFC Stanbic Bank and to provide efficient services of the banking system e. g checking clearing process<sup>8</sup>.

**M-pesa structure:** is classified according to the three basic transactions as follow:- (a) Cash in Transaction; Depositing of money by a customer at M-pesa agent on return for e-floats as customers I.D is required. M-pesa agent inserts customer mobile number and amount of deposit and the customer wait for a confirmation message for the amount deposited. b) Cash out Transaction; Exchanging of e-float by a customer for cash at a M-pesa agent as I.D is needed for validity. The customer enters M-pesa menu on his/her phone choose to withdraw cash, enter agent number, amount and his/her M-pesa pin, they both receive the transaction text and eventually the agent gives the customer the amount of cash withdrawn. (c) Pesa: Person transfer transaction means transfer e-floats from one person's phone to another. The user enters the receipted phone number and then transfers amount on his/her phone as both sender and recipient receive a confirmation text for the amount transferred.<sup>9</sup>

## Position of Islamic law on M-pesa transaction

### 1) Okoa jahazi

The concept of Okoa Jahazi by Safaricom through M-pesa services is where the customer is given advance credit loan on Safaricom airtime commonly known as credit but in return upon payment, it is subjected to interest. The following table illustrates the rate of which Okoa Jahazi credit is charged.<sup>10</sup>

S/N	Kopa credo	Charges	Airtime Received
1	1000	100	900
2	500	50	450
3	250	25	225

<sup>7</sup> Isaac Mbithi and David N, Weil. *Mobile Banking: The impact of M-pesa in Kenya*. (National bureau of Economic Research: Cambridge, 2011), 16

<sup>8</sup> Safaricom, *M-pesa Tarrifs july 1<sup>st</sup> 2018*, < [http:// www.Safaricom.co.ke/images/Downloads/M-pesa.pdf](http://www.Safaricom.co.ke/images/Downloads/M-pesa.pdf) > viewed on 10/7/2019.

<sup>9</sup> Personal Interview, with Salim Abdulrahman ,M-pesa User, Mombasa County in Majengo 20/6/2019.

<sup>10</sup> Safaricom, *Okoa Jahazi*, Retrieved: <<http://Safaricom.co.ke/personal/plans/getting-started/okoa-jahazi> > [viewed 24/6/2019](#).

4	100	10	90
5	50	5	45
6	20	2	18
7	10	1	9

Figure (2) Okoa Jahazi charges

According to the above table, for example, when a person borrows ksh 100 will receive ksh 90 which means ksh 10 will have been deducted in advance. And when you want to pay back the above credit amount you will be required to pay 100 ksh instead of 90. On top of that the payment has to be settled within seven days. Failure of which you will be black listed and you will not be able to access the services.<sup>11</sup>

As stated by the above table it is obvious that Okoa Jahazi is part and parcel of Riba. Because any loan which involve additional payment is Riba with no disputable opinion from Muslim Scholars.<sup>12</sup> In addition, Riba is prohibited by both the Quran and Sunnah. The verses in the prohibition of Riba are “*The usury (interest) that is practiced to increase some people’s wealth, does not gain anything from God. But if you give to charity, seeking God’s pleasure, These are the ones who receive their reward many fold.*” (Ar-Rum 30:39) furthermore Allah said: “*And for practicing usury (interest), which was forbidden, and for consuming the people’s money illicitly, we have prepared for the disbelievers among them painful retribution.*” (Al-Nisa 4:161) likewise, “*O you who believe, you shall not take usury (interest), compounded over and over. Observe God that you may succeed.*” (Al-imran 3:130) Other evidence from Sunnah: *Narrated by Ibn Masoud, “The Prophet cursed the receiver and the payer of interest, the one who records it and the two witnesses”*.<sup>13</sup> Muslim scholars have categorized two type of Interest (Riba) based on Quran and Sunnah textual.(a) Riba al-Nasi’ah: The word Nasi’h means delay/postpone, which refers to a certain duration given to lender for repayment of loan in return for extra payment. Any pre-determined or extra amount over the original loan by the borrower is considered Riba.<sup>14</sup> (b) Riba al-fadl: it may be classified as sale or exchange transaction of a commodity,<sup>15</sup> this type has been mentioned in Sunnah as follow;

<sup>11</sup> Personal Interview with Ustadh Abdulatwif Ibrahim, M-pesa users, Mombasa County in Madrasatul- Falah 20/6/2019.

<sup>12</sup> Āḥmad Ğassan. ĀLqārḍ Ālāḍ ğra ĀL-man‘a. (university journal for economic and law, 2007), Vol. 23:422

<sup>13</sup> Āḥmād bin Ḥanbal. *Musnād Imām Āḥmād bin Ḥanbal*. (Beirut, Musāsāt al-sālāh: 2010), 1<sup>st</sup> ed. Vol.6, 270, No of Hadith 3725

<sup>14</sup> Muhammad Zubair and Sadia Khattak. *Concept of Riba (interest) in Islamic law: its impact on society*. (journal of Abdul wali Khan University Marda k.pk Pakistan: 2015), vol. 27, 4, 2.

<sup>15</sup> Opcit, Muhammad Zubair and Sadia Khattak, 2

*“Gold for gold, silver for silver, wheat for wheat, barley for barley, date for date, salt for salt, must be equal on both sides and hand to hand, whoever pays more or demands more (on either side) indulges in Riba”.*<sup>16</sup>

In the study of Muhammad Abu Bakar found that the rule of exchanging counter value, one must be exchanged on spot, meaning if one of commodities if delayed it will be consider as Riba (Interest). Two commodities must be equal in quantity if commodity is the same; but this rule would not be applicable in different good (sugar for salt).<sup>17</sup> According to Zamir there are three essential elements which can be contained in a transaction to be classified as Riba as follows;<sup>18</sup> (a) **positive one:** this element is visible in okoa jahazi , which is fixed and ex-ante before the transaction takes place. The customer is aware that he/she will pay a fixed interest on a certain amount of credit advanced to him regardless of any misfortune. (b) **One which is tied to the time period and amount of money:** the time limit of payment of Okoa jahazi is fixed regardless of whether the customer is capable of paying within the period or not. Upon deferment, the customer is blacklisted and other measures inflicted i.e the customer is terminated from using the Okoa jahazi services.(c) **payment of it is guaranteed regardless of the outcome or the purposes for which the principal sum was borrowed:** In Okoa jahazi, the payment is guaranteed since the customer pays in advance the interest on the loan as shown in figure (1) above.

From the above discussion and arising from Quranic which have been quoted earlier, it is obvious that OKOA JHAZI (Kopa Credo) is a Riba based transaction. This is classified as Riba AL-Nasihah which deals with interest on borrowed money, the airtime is a form of digital money<sup>19</sup> In this Riba exchange is delayed or deferred and an additional charge is associated with such deferment. And any predetermined payment over the above actual amount of principal sum is prohibited in Islam.<sup>20</sup> An exception to this is the loan in the form of Qard Hassan (free interest loan) which does not accept any interest or additional amount against the money lent. The evidences from Quran permissibility of Qard Hassan *“Who is it that would loan Allah a goodly loan so He may multiply it for him many times over? And it is Allah who withholds and grants abundance, and to Him you will be returned”.* (Al-baqara 2:245) Sunnah: It is reported that the Prophet, may blessings and peace of Allah be upon him, said: *“In the night of the journey, I saw*

<sup>16</sup> Mūḥāmād bin Ḥībān, *Āl-Iḥsān fi Taqrīb sāḥīḥ ibn Ḥībān*, (Beirut, Musāsāt al-sālāh: 1998), 1<sup>st</sup> ed. Vol.11,390, No of Hadith 5015.

<sup>17</sup> Muhammad Abu Bakar, *basic of riba (interest) and its two major types* <<https://blossomfinance.com/press/basics-of-riba-interest-and-its-two-major-types-4-of-28>> viewed 12/7/2019

<sup>18</sup> Zamir iqbal and Abbas Mirakhor. *An introduction to Islamic finance: Theory and practice*. (John Wiley & Sons Ltd: Asia Pte. Ltd: 2011), 1<sup>st</sup> ed. 57.

<sup>19</sup> Brian Kettell. *Introduction to Islamic banking and finance*. (John Wiley & Sons Ltd: Asia Pte. Ltd: 2011), 1<sup>st</sup> ed. 37.

<sup>20</sup> Mūḥāmād Ābū Zuhūrā. *Buḥuth fi Rībā*. (Egypt, Darul fikri:1986), 24

*on the gate of heaven written, reward for Sadaqah (deeds of charity, alms) is ten times and reward for Qard is eighteen times.” So, I asked the angel, how is it possible? The angel replied, “Because beggar who asked had already had something but a borrower did not ask for loan unless he was in need.”<sup>21</sup>*

**Proposed concept for okoa jahazi:** a new concept based on Islamic product such as Qard Hassan (free interest loan) and Tabarru’u (donation) this model uses a contribution that is 100% free derived from corporate social responsibility to enable client to borrow Airtime credit without deduction, in case of customer fail to repay the benevolent loan the M-pesa (lender) must accept it as a charity.

## 2) Betting

M-pesa provides a platform for gambling companies, in this case, the M-pesa facilitates the transaction in gambling. Gambling means to play for money or bet on uncertain outcomes or take something on a contingency; take a chance.<sup>22</sup> Customer uses the M-pesa service in betting where the M-pesa mobile company shares the interest with gambling companies like spot pesa.<sup>23</sup> In Kenya alone, a study of year 2017 found that an estimated two million individuals engage in mobile-based sports betting.<sup>24</sup>

Gambling (Maysir) literally means game of chance<sup>25</sup> so it is a game of chance with two or more than contracting person, each of them undertake risk of loss of chance, the loss means gain for the other. The word Maysir in Islamic finance defined as “*any transaction conducted by the two parties to possess the ownership of a particular asset or service with intention to obtain benefit to one party and harm to another one by linking a particular transaction with an act or event*”.<sup>26</sup> on the other hand, there are three elements to be considered a transaction associated with gambling (a) existence of assets from contracting parties, (b) The existence of game that is used to determine the winner and loser, (c) The winner will acquire a property while the loser will lose his betted

<sup>21</sup> Muḥāmāḍ bin yāzīd qazwēyn. *Sunan ibn maḡah*, Beyrūt. (Darul Risalāi ‘lamiyāh: 2009), 1st Vol 5, 23, No of ḥadiṡh 2719

<sup>22</sup> Meriam – Webster.com 2009 gamble. <<http://www.meriam-webster.com/dictionary/gamble>> viewed 9/6/2019

<sup>23</sup> M-pesa charges, How to Deposit into Betin Kenya using M-pesa Betin Paybill Number, Retrieved, <<https://www.M-pesacharges.com/how-to-deposit-into-betin-kenya-using-M-pesa>> viewed 14/7/2019

<sup>24</sup> Daily Nation, Retrieved: <<https://www.nation.co.ke/news/Betting-firms-security-vetting/1056-5178946-1x3tut/index.html>> viewed 3/7/2019.

<sup>25</sup> Muhammad bin Ahmad Alqurtubi. *Al-jami’ li Ahkami Al-Qur’an*. (Riyadh, Darul Alim Alkutub:2003), 3

<sup>26</sup> Muhammad Imam Sastra Mihajat. *Contemporary practice and Maysir in Islamic banking and finance*. (Malaysia, International Journal of Islamic Management and Business: 2016), 11

asset.<sup>27</sup> Gambling is heavily prohibited in Islam, According to the evidence of the Holy Qur'an in the following verses which prohibits such kind of transactions: *"They will ask about intoxicants and games of chance. Say: "In both there are great evil as well as some benefit for man, but the evil which they cause is greater than the benefit which they bring." (Al-baqara, 2:219)* Other verses from the Quraan. *"O you who have believed, indeed, intoxicants, gambling, [sacrificing on] stone alters [to other than Allah ], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful. Satan only wants to cause between you animosity and hatred through intoxicants and gambling and to avert you from the remembrance of Allah and from prayer. So will you not desist" (Al-Maida,5:90,91).* The Reasons behind the Prohibition of gambling: is that, it is considered one of the sources of injustice, profit can only be available after one side wins. Also it is turning off the economic growth which leads to transferring the wealth from productive to non productive society. Also gambling will neglect in remembering of Allah and performing prayer as indicated in Qur'an *"and to avert you from the remembrance of Allah and from prayer"* (Al-Maida,5:90,91). Nevertheless, two parties do not have full consent and satisfaction in a contract. Full consent can only be achieved through perfect knowledge from contracting parties of the counter values intended to be exchanged and this lead to Gharar protects against unexpected losses and the possible disagreements regarding qualities or incompleteness of information. In this occasion, Dr Fred Matiangi (The interior cabinet secretary) released his report and stated that: *"gambling has increased idleness especially to the youth, they spend a lot of time in gambling process, also it increases crime as some time youth steal to cater for betting, moreover, some of the youth commit suicide after losing their chances"*.<sup>28</sup>

In conclusion, In Islamic perspective money denotes purchasing power which cannot be used to generate more purchasing power without due process of creation of goods and services.

### **Proposed free lottery betting ticket**

Gambling-free lottery is a new proposed concept based on Islamic transaction such as Musharaka (partnership) and Qard Hassan (free interest loan) whereby there is no loser. That is; all participants win, it can work, especially when we consider that, the client buys a ticket after he/she registering his/her full details and select a series numbers, the participant keeps their tickets in order to claim for a prize or reimbursement. However before the lottery takes place, the organizer deducts a sum of money as administrative fee which is not included as the jackpot. At the end of the game, the winner receives the jackpot as an interest-free loan and he/she is given a specific time to return to

<sup>27</sup> Ibid, Muhammad Imam Sastra Mihajat, pg 11.

<sup>28</sup> Daily Nation, *future of 19 betting firm now depend on security vetting*. <<https://www.nation.co.ke/news/Betting-firms-security-vetting/1056-5178946-lx3tut/index.html>> viewed 3/7/2019.



the organizing company (non-winning).<sup>29</sup> For the sake of justice, the winner should be excluded from the next chance and the money back guarantee should be served even in the case of death.

### 3) Money transfer

The M-pesa services are provided by Safaricom mobile company in Kenya, Transaction charges for transfer and withdrawal depends on the amount of Money being transferred and withdrawn. However, Using M-pesa Services saves cost and travel expenses. Another benefit of using M-pesa transaction is the convenience of transacting where M-pesa agency for an instance is a scarce and the customer already has official balance; he/she does not need to go to an agent. Also reduced risk of carrying cash since most M-pesa agents are nearer to the customer than any other financial institutions.<sup>30</sup>

The table below shows transaction charges for M-pesa users for both transfer and withdrawal.<sup>31</sup>

Customer Charges			
Transaction Range (KShs)	Transactions		
Min	Max	Transfer to M-pesa Users	Withdrawal from M-pesa Agent
1	49	Free	N/A
50	100	Free	10
101	500	11	27
501	1,000	15	28
1,001	1500	26	28
1,501	2,500	41	28
2,501	3,500	56	50
3,501	5,000	61	67
5,001	7,500	77	84

<sup>29</sup> Ahmad Hassanat and Ghada Awad Altarawneh. *Gambling –free lottery, a new Islamic lending ticket.* ( journal of Islamic Accounting and Business research: 2014), 5

<sup>30</sup> Mukesh Sadana, George Mugweru and others, *Riding the M-PESA Rails: Advantages & Disadvantages*, <[http://www.microsave.net/wp-content/uploads/2018/10/BN\\_94\\_Riding\\_M-pesa\\_Rails\\_Advantage\\_Disadvantages.pdf](http://www.microsave.net/wp-content/uploads/2018/10/BN_94_Riding_M-pesa_Rails_Advantage_Disadvantages.pdf)> viewed 24/6/2019.

<sup>31</sup> Safaricom, M-pesa Tarrifs july 1<sup>st</sup> 2018. <[http://www.Safaricom.co.ke/images/Downloads/M-pesa\\_tarrifs\\_fa\\_july\\_1st\\_2018.pdf](http://www.Safaricom.co.ke/images/Downloads/M-pesa_tarrifs_fa_july_1st_2018.pdf)>. Viewed 10/7/2019.

7,501	10,000	87	112
10,001	15,000	97	162
15,001	20,000	102	180
20,001	35,000	105	191
35,001	50,000	105	270
50,001	70,000	105	300

Figure (2) transaction charges for M-pesa users for transfer and withdrawal

M-pesa (Money Transfer) is one of the main devices of credit provided by Safaricom which enables to make payment in another place through agent shops.[personal interview,2019:6] This kind of transaction is much close to “Wakala” which means “agency” or representation of a person on behalf of another person in certain dispositions.[Naphia: 47:1995] So, it is where someone is appointed to perform an act, do any work or provide service on behalf of another (principal) which act or work is capable of being delegated<sup>32</sup> This is to authorize another party as an agent (wakil) to perform a particular task, in matters that may be delegated, either voluntarily or with the imposition of a fee. [Aishath and others, 2016:162] The legality of this transaction is based on the Quranic verse and the practice of the Prophet S.A.W. *“So send one of you with this money to city, so that he can see any good food that he can bring to us as sustenance”*. (Surah Al- Kahf, 18: 19) The legitimacy of Wakala is further derived from the Hadith of the Prophet as narrated by Jabir ibn Abdullah (May Allah be pleased with him): *I intended to go (on expedition) to Khaybar. So I came to the Holy Prophet (Peace be upon Him), greeted him and said: I intend to go to Khaybar. He said: When you come to my agent, you should take from him fifteen Wasqs (of dates). If he asks you for a sign, then place your hand on his collar-bone.*<sup>33</sup> Furthermore, Muslim jurists have demonstrated the Principles of wakala as follows:

- a) Parties in Wakala contract: There are two parties in wakala, namely the principle, the one who delegates the responsibilities on his/her behalf, and an agent, the one upon whom the responsibilities are delegated. Both of them should possess the legal capacity to enter into a contract.
- b) Subject matter: The subject matter of agency is for what the contract is entered into or the disposition done by the appointed agent with the authorization of the principal. The subject matter of agency includes all types of financial contracts and dealings that a person can perform

<sup>32</sup>Rusni Hassan and others. Islamic Banking and Takaful. (Malasyia: Pearson Malaysia Sdn Bhd: 2016), 114

<sup>33</sup> Sulēimān bin Āl-ašāṭ. Sunanu Ābī Daud. (Beyrūt: Darul Risalāṭ: 2009), 1<sup>st</sup> ed. Vol.7, 475, No of Hadith 3632.

personally. It should be something that can be disposed of through the agency. It should be known to the agent and should be owned by the principal.

c) Expiry of the agency: In normal conditions, the agency contract comes to an end on the fulfilment of the agent's duties or on the expiry of the fixed period of Wakala. In addition, an agency contract expires when the principal or agent dies or loses legal capacity, or when the institution undergoes bankruptcy or liquidation except in the case of an interminable agency or when the principal no longer owns the assets in question.<sup>34</sup>

d) Service fee (Jo'ala): A principal undertakes to pay an agent a specified amount of money as a fee for performing a specified service in accordance with the condition and regulation of the contract fixed between the two parties<sup>35</sup>

According to the above transaction Mobile money company takes a commission from the sender (Transfer charges) and the receiver (withdrawal charges) manipulating the charges does not promote social justice and equity in human society. This promotes exploitation and injustice. Allah said from Quraan "*O you who have believed, do not consume one another's wealth unjustly*". (Suratul Al-Nisaa 4:29)

**Proposed money transfer model:** The Wakala model relies on Islamic jurisprudence, whereby the principal appoints an agent (M-pesa) to undertake a certain task (transfer money) and the M-pesa would most likely charge the principal only agency fee after performing a specific job, any negligence, misconduct, fraud M-pesa will be responsible.

#### 4) M-shwari:

Is one of the transactions offered by M-pesa, it works as follows: it enables customer to open M-shwari bank account via mobile phone without filling the forms or visiting banks, you can withdraw and deposit through M-shwari application. No maintenance fee to your account, you can save at least ksh 1 and earn interest up to 7.0% according to Central Bank Act 2016. at the same time you can access loan of a minimum ksh 100 to 1,000,000 and you will be charged 75%.<sup>36</sup> According to the discussion above, M-shwari takes a form of Wadi'ah (Deposit) literally means property left with a person for safe keeping,<sup>37</sup> The legality of this transaction is based on the Quranic verse, Allah said in the Qur'an "*Indeed, Allah commands you to render trusts to whom they are due*" (Al-Nisaa 4:58) The legitimacy of Wadi'ah is reported that the Prophet (S.A.W).

<sup>34</sup> Maarifa academy. *Islamic banking and finance principle and practices*. (No place & publisher: 2014), 64

<sup>35</sup> Ibid, Zamir iqbal and Abbas Mirakhori, pg 108

<sup>36</sup> Safaricom, *M-shwari*. <<https://www.Safaricom.co.ke/personal/m-pesa/do-more-with-m-pesa/loans-and-savings>>. viewed 4/7/2019.

<sup>37</sup> Shafi'i Abdul Azeez Bello and Rusni Bt Hassan. *Saving And Current Account In The Context Of Shari'Ah Contract*. (Arabian Journal of Business and Management Review Nigerian Chapter: 2014), 9

Says: “Discharge the trust to the person who entrusts it to you, and do not betray the one who betrays you” .<sup>38</sup>

There are two measures in Islamic jurisprudence related to wadi’ah (deposit); one is the receiver (al-muwadda) he/she accepts deposit as dhamana (Trust) and does not guarantee on paying back the money in case of theft unless there was negligence. Also he/she is not allowed to utilize the money for any purpose. No fee will be charged for safe keeping.<sup>39</sup> Another measure is to accept deposit as Qard Hassan (free interest loan). Which means giving a good or property to another in order to utilize it and he/she returns it immediately or after specific agreed time.<sup>40</sup> Receiver (al-Muwadda) is allowed to utilize the funds and enjoy all the profits and losses, and owes the owner (Muwadii) only the principal amount borrowed.<sup>41</sup>

Based on the previous discussion, money deposited in M-pesa is a benevolent loan (Qard Hassan) any additional amount (7.0%) imposed by the central bank to the borrower (M-pesa) is considered interest (Riba) and Islam prohibits the lending based on Riba.

**Proposed M-shwari Model:** The customer and M-pesa are partners in a Musharakah model (partnership) such as home financing, trade financing, share and equity products and so on. Both two parties donate capital in a ratio, and decide to share profit and loss. Any profit and loss must be equal according to the proportion of their capital contribution.

### Conclusion:

This study examined the use of mobile money transaction with special focus on the Republic of Kenya. The results indicate customers are engaged in usury (Riba), Maysir (gambling) and other prohibitions in the daily financial transaction through the products of Safaricom Company via M-pesa. This is inconsistent with Islamic law in terms of rules, regulations and operational method. Therefore it is suggested that if Safaricom like to have full access to the Muslim population both nationwide and across the borders, it has to introduce Shari’ah compliant products and services compatible with the Islamic commercial principles.

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