

**JUDGMENT WRITING: STYLE AND TECHNIQUES  
(SHARIA COURT OF APPEAL PERSPECTIVES)**

**BEING**

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**OPENING REMARK**

In the Name of Allah, the Most Beneficent, the Most Merciful.

I commence by extending my profound gratitude to Al-Mighty Allah who made it possible for us to witness this very important programme organized by the National Judicial Institute. Permit me to extend my sincere appreciation to the Administrator of the Institute, **Hon. Justice R. P. I. Bozimo, OFR** and his Lordship's management team, for finding me worthy to stand before this august gathering and present a paper.

It was on the 12<sup>th</sup> of this month, barely 12 days today, that my Secretary, who was attending a workshop here in NJI called and informed me that, a letter inviting me to present this paper was given to him for onward transmission to me. By the letter, the paper was to be submitted on or before 2<sup>nd</sup> May, 2016. I think I should mention this because the time was too short. But, of course I should not allow the opportunity to meet with my fellow Judges and Kadis to be lost. So I tried to come up with something that can bring up discussion on the topic.

## **INTRODUCTION**

Justice delivery ought and must be seen as service delivery with all its necessary condiments and compliments of endeavoring to meet the needs and necessary expectations of those who seek justice. This will invariably encourage the public who are the patrons of the justice system to repose total and unwavering confidence in the system. It is now beyond argument that public confidence is sine qua non to an effective system of administration of justice. Once that public confidence is missing in the justice sector, the effect of the entire system will be devastating.<sup>1</sup>

Good judgment enhances the image and perception associated with the justice delivery process and increases public confidence in the judiciary. Litigants at all times look to just, fair and quality justice. A well written to the point judgment based on comprehensive analysis of facts and law is not only an indication of the intellectual strength of a Kadi but also is a sign of a worthy judicial system. It is therefore indispensable that Kadis acquire the skill to write good judgments.

## **SHARIA**

Sharia is an Islamic word which means “the straight path to God”. It is a moral code and religious law of Islam which deals with many topics addressed by the common law. It is a divine law as opposed

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<sup>1</sup>Dele p. Learning the Art of Good Judgment Writing. Judgment Writing and Judgment Delivery edited by Hon. Justice Umaru Eri, OFR National Judicial Institute, 2013

to manmade law. The Holy Qur'an provides in Chapter 45 verse 18 as follows:

*Then we have put you (O! Muhammad) on a plain way to our commandments. So follow you that path and follow not the desires of those who knows not.*<sup>2</sup>

## **JUDGE/KADI**

A Judge/Kadi is a public official appointed to preside in court of justice or other judicial tribunal in order to administer the law, by applying the law to the facts established by evidence.

The responsibility of adjudicating on the disputes and conflict between the 'Ummah' was first of all vested on the Prophet Muhammad (S.A.W) by Allah (SWT). The same responsibility was vested on the 'Ummah' as they were charged to refer all their grievances to the Prophet (SAW) for settlement and resolution. This can be seen from the Qur'anic provision<sup>3</sup> as follows:

*But no, by your Lord, they can have no faith, until they make you (O! Muhammad) judge in all disputes between them, and find in themselves no*

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<sup>2</sup> Doi A. I. Sharia the Islamic Law. 1<sup>st</sup> ed. P.3

<sup>3</sup> Surat Al-Nisa, Ch. 4:65

*resistance against your decisions, and accept (them) with full submission.*

The Holy Qur'an in another chapter provides<sup>4</sup> “*And so Judge (O! Muhammad) among them by what Allah has revealed and follow not their vain desire...*”

For a person to be appointed a Kadi under the Sharia, he must possess a sound knowledge of all the sources of Sharia viz: the Holy Qur'an, the Sunnah of the Prophet (SAW), the Ijma of the Ulama and other secondary sources of the Sharia.

**Abdul-Nasir Musa Abul Basal**<sup>5</sup> has this to say:

*Knowledge is a necessary precondition for the appointment of a Kadi. Some say he must be a 'Mujtahid'; an assiduous and industrious person, while others agree on the appointment of a 'Muqallid', one who derives information from the available precedence through the work of the Mujtahid.*

Jurists are unanimous on the fact that possession of a sound knowledge of Islamic jurisprudence (fiqh) and Law is a necessary prerequisite to becoming a Judge of any Court of Law.

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<sup>4</sup> Surat Al-Ma'idah, Ch.5:49

<sup>5</sup> Al-Hukum Al-QadaiyFi Ash-Sharia Wal Qunun P. 145

A Prophetic Hadith provides that, “A Judge is rewarded twice if he strove and achieved in upholding justice, but he is rewarded once if he strove and erred in law.”<sup>6</sup>

## **JUDGMENT**

A judgment in a strict sense is simply the end product of a judicial proceedings in a court of law. It is a law based on decision of a Court. In a broad sense, judgment is any pronouncement made by a person who acts in an *obiter* in any form of dispute involving at least two opposing parties. **Black’s law dictionary**<sup>7</sup> also defined judgment as

*“the official and authentic decision of a Court of justice upon the respective rights and claims of the parties to an action or suit therein litigated and submitted to its determination; the final decision of the Court resolving the dispute and determining the rights and obligations of the parties; the law’s last word in a judicial controversy, it being the final determination by a Court upon the rights of the parties upon matters, submitted to it in an action or proceedings.”*

It is noteworthy that the word ‘*judgment*’ include what is usually referred to as consequential orders. Thus the word judgment so

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<sup>6</sup> Abu Muhammad Al-Hussain Al-Baghwiyy, Adab Al-Qadi Minat-Tahdhib P.8. Principles of Judgment Writing in the Sharia Court of Appeal by I. A. Haroon, Grand Kadi, Kwara State, a paper presented at the refresher course for Judicial Officer at NJI, 2013

<sup>7</sup> 5<sup>th</sup> edition, p. 755.

widely conceived includes those for award of damages, various decrees, various final orders, declaratory reliefs whether in *reale* or in *personam*, and whether given in consent or after a contest.<sup>8</sup>

It is however, important to note that the word judgment is used in both the strict and the broad senses. In strict sense a judgment is that formal part of the determination of the issues in controversy between the parties which a registrar can extract, seal and issue to the successful party and enter in the book of the Court. The rest of the judgment is referred to as '*the reason for the judgment*'. This narrow or strict judgment is recognized in the case of **Moller V. Roy**<sup>9</sup> where the word judgment was interpreted to exclude the reason for the judgment.

In the broad sense, however it is commonly used to represent the whole of that reasoned decision which in our Country is delivered by a judge or judges depending on whether the judgment is original or appellate.

**Abu Musa Al-Ash'ariy's** letter by **Khalifah Umar Ibn Khattab** which laid the principles and procedural rules to be adopted in hearing a case reads as follows:

*Judgment is an established obligation and an adopted tradition of the Prophet (SAW). Try to understand matters before you. Statements or*

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<sup>8</sup> Hon. Justice Philip N. A, the Art and Science of Judging: Judgment Writing, Judicial lectures:continuing Judicial Education for the Judiciary, 1990.

<sup>9</sup> (1975)49 R. L. J. R. 311, at p. 312

*decisions that are not enforceable are invalid. Place the parties before you on equal right that a privileged party will not vie for your favour or take you for granted, while the less privileged will not fear your injustice. Be certain and convinced of complex issues once they are not provided for in the book (Holy Qur'an) or Sunnah.*

## **TYPES OF JUDGMENTS**

A judgment may be classified into summary and reserved. A summary judgment is delivered instantly upon conclusion of hearing, sometimes without giving reason for the judgment. But when difficult questions on facts or law or both are raised in the proceedings, the Court ought to reserve its judgment to a future date which may be fixed and announced at once or later upon giving due notice to the parties. On that date the Court delivers a reason and reserved judgment. Sometimes Courts adjourns judgments sine die but this is discouraged as Courts are encouraged to at all time, when adjourning for judgment, to give a definite date.

A judgment may also be either interlocutory or final. Where, because of the nature of the issues that have been canvassed, the judgment merely directs a further action or step to be taken, the Court is said to have delivered an interlocutory judgment. But where the judgment is complete unto itself and, after hearing inter

parties is available for immediate execution, it is said that a final judgment have been entered. A judgment delivered under undefended list is a final judgment on the ground that the defendant was given opportunity to defend himself but has declined to do so.<sup>10</sup>

## **STYLE AND TECHNIQUES OF JUDGMENT WRITING**

It is very important to note from the onset that it is a Constitutional requirement that all Courts of record (Sharia Court of Appeal inclusive) must give their judgments in writing within a reasonable time.

Under the Shari'a, **Abu Ya'la Al-Haqiliy**<sup>11</sup> is of the view that judgments should not be delayed after hearing the matter where he stated as follows:

*The aim of appointing a Judge is to settle the disputes and determined the cases, the more the disputes are quickly determined within a short time the better for the conflicting parties. However, this should not lead to rushing of the hearing that may affect proper and fair hearing.*

**Section 294 (1)** of the *Constitution*<sup>12</sup> provides as follows:

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<sup>10</sup> Hon. Justice Philip N. A. op cit.

<sup>11</sup> Al-Ahkam Al-Sultaniyyah, p. 63 Abdul-Karim Az-Zaydani, Nizam Al-Qada, p. 258

<sup>12</sup> FRN, 1999 (as amended)

*“Every Court established under this Constitution shall deliver its decision in writing not later than 90 days after the conclusion of evidence and final addresses and furnish all the parties to the cause or matter with duly authenticated copies of the decision within seven days of delivery thereof”.*

The above authorities are in tandem with the popular saying *“justice delayed is justice denied”*.

Under the Islamic law, the jurists are unanimous on the requirement of judgment to be in writing. **Abdul Karim Az Zaiyani** in his book, ***“Administration of Justice”*** highlighted some necessary steps towards documentation and writing of judgments as follows:

*“the Judge or his Court scribe taking the order from him (the judge) to record, shall put down in writing (the Judgment) with full details of the complaint, causes, claims and evidence in support of the litigants and how they occupied it in this document that jurists referred to as “Al-Mahdar”. He shall record all the facts, submissions for and against; he shall also record his decisions in terms of orders, rulings and sanctions (judgment). He shall thereafter produce copies for himself, the litigants and the Court registry. This*

*document must contain detailed information of the parties with address, dates and suit number”.*<sup>13</sup>

The above quotation is basically guiding a Kadi on what he should give attention to while writing a judgment. The following important aspects should be given due consideration:

1. Highlights of the facts.
2. Evidence.
3. Statements of issues formulated from the facts (grounds of appeal).
4. Determination of issues by applying the appropriate law to the facts.
5. Decision and disposition of the case.
6. Date of the decision, signature of the Judge and stamp of the Court.

### **Preparation for writing a judgment:**

Once a Kadi is about to start writing a judgment there is a level of preparation expected of him and this will depend on the nature of the case. That is to say the nature of the preparation is determined by the issues in question in the matter. It will also depend on whether the judgment is original or appellate. Since Sharia Court of Appeal as the name implies is a Court of appellate jurisdiction, we are going to concentrate on the judgment of appellate cases.

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<sup>13</sup> Abdul-Karim op. Cit p. 259, in by Hon. Justice Haroon A. I. Principles of Judgment Writing in Sharia Court of Appeal Delivered at the Refresher Course for Judicial Officers, at the National Judicial Institute, Abuja 2013

The concept and procedure for preparation in appellate decisions are basically the same with original cases, but the setting is different. With regard to the High Court, Sharia Court of Appeal and the Customary Court of Appeal, **Justice Philip Nnaemeka-Agu** laid down the following points as necessary for preparation.

i. Noting the issue or issues in contention:

In appeals the issues for determination emerges from the grounds of appeal unlike the original cases where the issues emerges from the pleadings. Therefore, to be able to note the issues for determination in appeal it is necessary to begin preparation for judgment writing by first reading the grounds of appeal. This will also pinpoint where to concentrate while reading the records of proceedings. If the grounds of appeal and the issues are so wide, the judge has no option but to read the record carefully. He should always use the issues formulated as the focal points around which he should collect the relevant evidence and note how the Court below resolved the issues. At this stage he should have made a rough note of the issues and evidence in support thereof, he should have also made of his mind as to the issues he wish particularly to resolve after hearing oral argument in the appeal.

ii. Hearing the appeal;

During the hearing of the appeal, he should keep his official record of the arguments of the appeal carefully and do his best to get clarifications of the issues he has drawn up in his rough digest at

this stage. At the end of the hearing of the appeal, the appellate Judge/Kadi should be able to make his mind on issues of fact, if any, in the appeal.

iii. After hearing the appeal;

It is now left to him to prepare himself to marry the facts with the law. He will therefore:-

- a. read the authorities cited to him by the counsels on both sides and see how they should influence his likely conclusions on the facts;
- b. Read other relevant authorities known to him on the points at issue in the appeal. He should make notes of those that he considers relevant and to the points. A few quotable *ratios* may be noted also by page and line references.

## **STYLE AND TECHNIQUE**

Style is a manner of writing; mode of expression of thought in language peculiar to an author or another. It is therefore clear that there are several styles of writing judgment depending on the individual Kadi. People differ in the way they express the very same thought. Therefore, there is no hard and fast rule of style in writing judgment, but we can attempt to show what a judgment written in a good style should consist or shouldn't consist of. In one short sentence, a good judgment must be written in a language that is very clear, succinct, readable and beautiful. To be able to have

clarity of thought one must have a good grasp of the language one is writing in and be able to separate all the ideas that may be surging through one's brain, at the time of writing, into different and orderly compartments. An appreciation of the issues arising in the relevant case makes it easier to achieve such clarity.

Under the Islamic law, a Kadi must understand the claim very clearly; he must comprehend all the facts and the adduced evidence before sourcing for the law and its application which will lead to his decision. Islamic jurists in their wisdom are unanimous that before a claim can be said to be valid, according to **Khalifah Umar Ibn Khattab**, such claim must be definite, specific, certain and unambiguous.

Every Kadi of the Sharia Court of Appeal is at liberty to express his thought in his own style and structure. **Abdulkarim Az-Zaidani**<sup>14</sup> opined as follows:

*It is not a condition that good judgment must follow a restrictive structure, style or expression. But it should be constructed in a plain, clear, apt and decisive language. It must be coherent, comprehensive, determining and firm, precise, final and binding free of ambiguity and vague.*

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<sup>14</sup> Op cit p. 259

**Hon. Justice Ogbu, JSC** in his words<sup>15</sup> Writing of judgment is an art in itself. And there exist more than one way of going about it. Therefore, it is possible to have many variations as there are Judges.

It is therefore clear that under the Sharia law there is no strict technique or style that must be followed. The requirement here is that the judgment must be clear, precise, plain, firm and in unambiguous language. Every Kadi is at liberty to express his thought in his own style.

Under the Maliki School of Thought, certain terminologies were created for the Kadi's verdicts or decisions. **Abdul Nasir Musa Abul Basal**<sup>16</sup> mention some of these terminologies as follows:

*The basic formula, according to the Maliki school is that, courts' decisions, verdicts, or pronouncements do not end in "I rule, decide, etc" rather, it extends to expressions such as "I hereby decide or rule; I impose or I order; I transfer the title of this property to so and so or I award it to him; I annul this marriage or sale; I confirm or it is established before me that this property belongs to so so and so.*

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<sup>15</sup> Garba V. Yahaya (2007) All FWLR (375) 862 at 882

<sup>16</sup> Op. cit p. 351

Although there is no hard and fast rule or method as to the style in which judgment is written. But it is also right to say that some ways are better than others. Hon. Sir Justice Udo Udoma (of blessed memory) identified two types of judgments, based particularly on style. They are:

1. The smooth or narrative style.
2. The 'straccato' style.

The narrative style according to him involves the assimilation of the facts of a case and the narration of the account as an eye witness reporting an event and setting out of the real issues in controversy deserving determination between the parties.

In 'straccato' style argument canvassed by the parties is reproduced by way of summary, one after the other, and the judgment usually ends by the Judge/Kadi or Court believing or not believing one side of the parties. The summary of the argument of each party is more often than not repetitive.<sup>17</sup>

## **CONCLUSION:**

Kadis should bear in mind that expressions used in the body of the judgment is of utmost important to the parties reading the

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<sup>17</sup> Hon. Justice Alaba O. A. paradigm shift in judgment writing (civil trials.) delivered at the Refresher Course for Judicial Officers at the National Judicial Institute, Abuja 2013 quoting Hon. Sir Justice Udo Udoma in his paper presented at the 1989 Judicial Conference of Benue State Judges.

judgment. Simple expressions are now generally accepted as the best styles adopted by Kadis while writing their judgments.

A judgment must in terms of language be firm and decisive; assumption and doubtful expressions are not acceptable.<sup>18</sup>

It is a settled principle of judgment writing that every Kadi has his own style, and that there is no fixed method of writing the judgment.

Let me close my paper with the famous tradition of the Prophet Muhammad (S.A.W) that explained the need for effective administration of justice reported by **Abu Daud and Ibn Majah**.

*“On the authority of Abu Buraid who said: there are three categories of judges (Kadis); two will go to Hell Fire while the third one will enter Paradise. A judge who knows the truth and passes judgment accordingly will enter paradise. A judge who knows the truth but perverts the course of justice will go to hell; and also a judge who knows not the truth and passed judgment based on ignorance shall go to hell.”*

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<sup>18</sup> The practice and procedure, Shaik Muhammad Bin Yusuf Al-Kafi, Ihkamul Ahkam Ala TufatuAl-Ahkam