AN OVERVIEW OF THE JURISDICTION OF
SHARIA COURTS

BEING A PAPER PRESENTED BY

HON. JUSTICE ABDULLATEEF KAMALDEEN
KWARA STATE SHARIA COURT OF APPEAL,
ILORIN

AT THE
WORKSHOP FOR AREA/SHARIA/CUSTOMARY COURT
JUDGES, DIRECTORS AND INSPECTORS OF
AREA/SHARIA/CUSTOMARY COURTS

ORGANISED BY
NATIONAL JUDICIAL INSTITUTE, ABUJA
BETWEEN
MONDAY 3RD AND WEDNESDAY 5TH APRIL, 2017

Bismillahir Rahmanir Rahim

Preamble:

All praises, glorifications and adorations belong to Almighty Allah, the Lord of the universe. May His peace and blessings perpetually be upon the Prophet Muhammad (SAW); his household, Companions and the generality of the Muslims till the Day of Judgment, amen. It is truism that honour belongs to the Almighty Allah (SWT), a Muslim must however continue to appreciate the honour accorded him by fellow human beings. The Prophet Muhammad was reported to have said that:
Whoever is not grateful to mankind (for the honour done to him) will not be grateful to Allah.

I therefore, on behalf of myself and the Kwara State Sharia Court of Appeal, express my sincere appreciation to the Administrator of this great Institute; National Judicial Institute, My Lord, Hon. Justice R.P.I. Bozimo OFR for giving me this opportunity to stand before this auspicious gathering and present this paper.

**Introduction**

The paper going by the topic “An Overview of the Jurisdiction of Sharia Courts” specifically targets Judges adjudicating on Islamic Law related matters at the lower and/or superior bench and Administrators in the Islamic Law courts. However, as the saying goes “no knowledge is a waste” it is believed that the paper, no matter how little, will be of benefit to all others in the administration of justice. In this regard, I have taken it upon myself to approach the paper from the following sub-topics:

i. Islamic Law (Shari’ah): Definition and Sources;

ii. General Aims and Objectives of Shari’ah;

iii. Overview of the Jurisdiction of Sharia Courts;

iv. Challenges facing the Jurisdiction of Sharia Courts in Nigeria;

v. Recommendations; and

vi. Conclusion.

**Islamic Law (Shari’ah): Definition and Sources**

Tons of books on Islamic Law and Jurisprudence (*Al-Fiqh*) are dotted with the meaning and definition of Islamic Law (Shari’ah). The definitions are given by the jurists and scholars of the different ages. Hammudah ‘Abd al-’Ati has defined Shari’ah; Islamic Law as:

> The body of those institutions which Allah has ordained to guide the individuals in his relationship to God, his fellow Muslims, his fellow men and the rest of the universe.¹

In trying to define Shari’ah, M.A. Ambali submitted thus:

> The word “Shari’ah” is adopted by jurists of Islamic law for the ordinances that Allah ordains for His worshippers so that they may be faithful and striving towards where lies their salvation here in this life and hereafter.²

---

² M.A. Ambali: The Practice of Family Law in Nigeria, p.2.
According to Professor Abdullah Shehu Sokoto, Shari’ah is defined as:

...an act of rules which regulate the conduct and affairs of people for settling all differences and avoiding all disputes.\(^3\)

It can be deduced from the above definitions and many others that Shari’ah is the totality of Islamic teachings and system, which was revealed to Prophet Muhammad (SAW), recorded in the Qur’an as well as deducible from the Prophetic divinely-guided lifestyle known as the Sunnah. It thus indicates that all the different commandments of Allah to mankind are part of Shari’ah.

**Sources of Islamic Law**

Generally, the sources of Islamic Law are categorized into two namely primary and secondary sources. The former is the original and the basis source while the latter is derivative. The primary source of Islamic Law comprises of the Glorious Qur’an and the Sunnah of the Prophet Muhammad (SAW). The Qur’an is the Book of Allah (SWT), sent through the Seal of prophets, Muhammad (SAW) which contains the words and commandments of Allah (SWT). It is the book of knowledge and guidance for men of righteousness at all times. It is a complete Code of Conduct for the believers in this world. Sunnah on the other hand, is the words, deeds and tacit approval of the Prophet Muhammad (SAW) as guide to the believers.

The different derivative means of sourcing for law are classified under the secondary sources of Islamic Law. They include the following:

i. *Ijma’*: rulings that are deduced by the scholars resulting from their efforts in the understanding and interpreting the texts of the Qur’an and Sunnah;

ii. *Qiyas*: the individual opinion of popular Muslim jurists;

iii. ‘*Urf*: custom, norm and traditions of the people (which are not in contravention of the provisions of the Qur’an and Sunnah);

iv. *Istihsan*: juristic preference;

v. *Istishab*: presumption of continuity; and


**General Aims and Objectives of Shari’ah**

---

Succinctly, the general aims and objectives of Shari’ah, Islamic Law are as follows:

i. The realization of benefit to the people concerning their affairs both in this world and in the hereafter;

ii. To pilot and protect the affairs of Muslims in their daily activities;

iii. To safeguard peoples’ interests and preventing them from harm in this world and the next;

iv. To prescribe punishment for criminals for the purpose of ensuring peace, harmony and tranquility within the society;

v. It is an instrument of ensuring the greater good of the society where everyone leads a peaceful life without depriving anybody of his rights.

vi. Shari’ah through its process aims at regulating the relationship of man with his God and with fellow beings; this is the reason why Shari’ah and Islamic ethics are inseparable; and finally

vii. To guide Muslims in all inter-personal transactions hence the Islamic Laws of Contract, Banking and Finance, Evidence, Marriage, Inheritance, Property, Human Rights and so on.

Overview of the Jurisdiction of Shariah Courts

Basically, jurisdiction is crucial, fundamental, radical and pivotal to adjudication. If it is missing, then everything in the adjudicatory process would be equal to nothing. Jurisdiction is desired for any court and cause and for the former to properly entertain the latter. It is not conferred on courts by mere orders of trial courts or agreement of the parties; it is either constitutionally or statutorily vested in a court. In legal parlance, jurisdiction consists in the competence, authority or power of a court, including a tribunal, to deal with matters in controversy, whether civil or criminal or hybrid of both of them, subjected before it by parties thereto from inception to judgment.4

Succinctly put, in the words of a University don, Ben O. Igweniyi:

Jurisdiction is the power or authority of a court of law or tribunal to go into a matter and deliver a binding judgment.5

Therefore, jurisdiction is the pillar upon which the entire case stands. Once a party, usually the defendant, shows that the court has no jurisdiction, the foundation of the case crumbles; then, parties cannot be heard on the

---

merit or otherwise of the case and that puts an end to the litigation. It is also important to note that lack of jurisdiction cannot be viewed by one or both parties. This is because parties cannot vest jurisdiction in court where there is none; and where the court takes upon itself to exercise a jurisdiction which it does not possess its decision amount to nullity. Therefore, for a court to have jurisdiction the following must be present:

a. The proper parties are before the court
b. The subject matter falls within the legal limits or areas for the court to adjudicate upon.
c. The composition of the court as to members and qualifications
d. The suit commenced by due process of law and upon fulfillment of any conditions precedent to assumption of jurisdiction.

It is instructive to note that the issue of jurisdiction, whether limited or not is not new to Islamic Law. It has long been acknowledged as a valid functional aspect of Islamic Jurisprudence and is therefore crucial, basic and fundamental to the adjudicatory process under Islamic Law. Thus Islamic law provides for jurisdiction over territory, period, parties and subject matter. Jurisdiction over subject-matter is classified into Criminal and Civil matters. The former further breaks down into Al-Hudud (offences with fixed punishment) and Al-Qisas (retaliation). In the same vein, the jurisdiction such as family law, contract and commercial causes, juvenile causes, specific/periodic causes and so on, is primarily to allow for specialization of courts and enhance speedy dispensation of justice. One of the prerequisites of a court in the exercise of its jurisdiction is that the subject-matter of the action must be within its jurisdiction and there should be no feature in the case which prevents the courts from exercising jurisdiction. Where therefore the subject-matter is not within the jurisdiction of the court, then there is nothing to adjudicate and as such all the proceedings and any decision reached in the absence of jurisdiction is a nullity. See Mantari v. Dan Galadima & Ors. It is therefore settled that no court shall entertain a case or matter which it considers it has no jurisdiction or not sufficient powers to try, but shall transfer or obtain the transfer of the case or matter to a court of appropriate and competent jurisdiction or power.

**Jurisdiction of Area and Sharia Courts**

---

6 Dr. AbdulKareem Zaydan: Nizam Al-Qada’ fi Ash-Shari’ah Al-Islamiyyah (Oman: Makatabatul Batha’ir, 1989), pp.46-47
7 (1993) NWLR (pt.287) 266
In Nigeria, Area and Sharia Courts owe their jurisdiction to State Laws establishing them. For instance, by **Section 2 of the Area Courts Edict, 1967** as applicable in the Northern States provides that:

*Every Area Court shall exercise the jurisdiction conferred upon it by or under this law within such area and to such extent as may be specified in its warrant.*

**Section 14(2)** provides that:

*Any person who institutes or prosecutes any cause or matter in an Area Court shall in that cause or matter be subject to the jurisdiction of that Area Court.*

**Section 15(1)** makes distinction as to person who are subject of the jurisdiction of Area Court between Native, Africans and Non-Africans and those person(s) who freely gave their consent to the exercise of the jurisdiction of the Area Court.

However, the Sharia Court Laws of the Northern States Shariah Judicial System confers original jurisdiction in all civil and criminal matters in Sharia courts. So also is the jurisdiction to hear and determine civil matters and causes where all the parties are Muslims. Where one of the parties is a non-Muslim, no jurisdiction is to be exercised unless he gives a written consent. Likewise in criminal cases where the accused are jointly Muslims and non-Muslims, the jurisdiction of the court is limited to the Muslims only. See **Section 5 of the Sharia Courts Law.**

**Upper Area and Upper Sharia Courts**

Both the Upper Area and Upper Sharia Courts have dual jurisdiction; as courts of first instance and also as appellate courts with powers to entertain appeals arising from the decision of Area Court and Sharia Court.

**Section 53 (2) of Area Courts Law, 1967** provides that:

*Any party aggrieved by a decision or order of an Area Court may appeal to:*

  *a.* the Shariah Court of Appeal in cases involving questions regarding Islamic personal law; and
  *b.* the High Court in all other cases.

It is pertinent to state at this juncture that twelve states, primarily in the north, have adopted (since 1999) the new Shari’a legal system: Zamfara, Jigawa, Bauchi, Gombe, Kaduna, Katsina, Yobe, Niger, Kano, Sokoto,
Kebbi, and Borno. The Shari’a courts in these states have jurisdiction over several new offences beyond personal law, including theft, unlawful sexual intercourse, robbery, defamation and drinking alcohol. The Shari’a courts may impose punishments, pursuant to the provisions of the Shari’a Penal Code Law (SPCL), that include death; forfeiture and destruction of property; imprisonment; detention in a reformatory; fine; caning (flogging); amputation; retaliation; blood money; restitution; reprimand; public disclosure; boycott; exhortation; compensation; closure of premises; and warning, among others.\textsuperscript{10}

**Sharia Court of Appeal**

The Sharia Court of Appeal was first established as a Northern Regional Court of Appeal to determine appeals emanating from the decisions of Area and Upper Area Courts in questions of Islamic personal law. It was created by the *Laws of Northern Nigeria, Cap 136 of 1960*. This creation was further confirmed subsequently by the Constitution of the Federal Republic of Nigeria, 1979 and later the Constitution of the Federal Republic of Nigeria, 1999 (as amended). However, by the provisions of Section 6(5) (f) & (g) of Constitution of the Federal Republic of Nigeria, 1999 (as amended), the jurisdiction of the court is wholly an appellate court. Shari’a courts of appeal 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 the Nigerian Constitution, which states, “The Shari’a Court of Appeal shall be competent to decide—any question of Islamic personal law regarding a marriage… relating to family relationship or the guardianship of an infant;…any question of Islamic personal law regarding a wakf, gift, will or succession where the endower, donor, testator or deceased person is a Muslim;…where all the parties to the proceedings, being Muslims, have requested the court that hears the case in the first instance to determine that case in accordance with Islamic personal law, any other question.”\textsuperscript{11}

From the above provisions of the Constitution and for the purpose of emphasis, the jurisdiction of Sharia Court of Appeal is limited to issues relating to Islamic personal law which are as follows:

\textsuperscript{10} Hauwa Ibrahim and Princeton N. Lyman: Reflections on the New Shari’a Law in Nigeria, pp.3-4
\textsuperscript{11} Section 262 (1) & (2) and 277 (1) & (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)
i. marriage (Nikah);
ii. dissolution of Marriage/Divorce (Talaq);
iii. custody of Children or Guardianship (Hadanah);
iv. maintenance (nafaqah);
v. inheritance/succession (mirath)
vi. will (wasiyya);
vii. endowment (waqf); and
viii. gift (hibah)

**Commencement of Appeal in Shariah Court of Appeal**

An appeal to Sharia Court of Appeal shall be entered within thirty (30) days from the date of the order or decision of the lower court. When such appeal is brought against an order or decision of the court below, it shall be entered in the registry of the court and the Registrar shall send notice of the appeal to the court below. Within one month of the date of receiving the notice of appeal, the court below shall forward to the Sharia Court of Appeal a Certified True Copy of the record of proceeding of the case being appealed against. **Order III Rule 2** provides that:

Every appeal may be entered by either of the following:

a. in the form of a petition in writing presented by the appellant or some other person duly authorized to do so on his behalf, this includes a legal practitioner;

b. the appellant shall enter his appeal by dictating his prayers to the Registrar or any other officer of the court if the court so permits;

c. the appellant may state his prayers orally to the court.

However, every appellant shall when entering his appeal give to the Registrar a postal address to which notices may be sent to him; where however, he is unable to do so, he shall from time-to-time call at the registry or send his agent to the court to collect any notice awaiting him or any communication meant for him at the court registry. See **Order III Rule 3.**

**Enlargement of Time**

No appeal shall be brought after the expiration of the time permitted by the rule. The prescribed period of appeal is one month (30 days) calculated from the date of the decision appealed against. After the expiration of the one month limited for the entry of appeal, no appeal shall be brought unless the court on the application of the party appealing enlarges the time. Application for the enlargement of time shall be supported by:
a. An Affidavit or affirmation or declaration having, in law, the effect of an oath setting forth good and substantial reasons for the application; and

b. Grounds of Appeal which *prima facie* shall give cause for the leave to be granted.

It is also important to note that it is discretionary and not mandatory in nature and in considering any application for enlargement of time to appeal, the court shall exercise its discretionary power judicially and judiciously. See **Order VI of the Sharia Court of Appeal Rules, Abuja**. However, the above conditions must be satisfied together at the same time. If one fails, the entire application fails. The Affidavit in support of the application must state clearly the reasons for the delay in complying with the rules of court.

The length of time for delay is immaterial for the grant of an application for extension of time within which to appeal provided the applicant is able to explain the delay and show good cause why the appeal should be heard. If there is no substantial reason for the delay the court may refuse the application.

Any application for enlargement of time may be made to the court and when time is enlarged, a copy of the order granting such enlargement shall be annexed to the notice of appeal. See **Order III, Rule 4**. Immediately after the hearing of a successful application for leave to appeal out of time, the court may, if it deems it fit and if the parties are ready, proceed at once to the hearing of the appeal. See **Order IV, Rule 4**. The appeal is heard at such time and place as the Registrar of the court notifies the parties after he might have caused the transmission of the copy of the record to all parties who shall apply for one, cause the appeal to be set down for hearing. See **Order VIII, Rule 2**.

**Non-Appearance of the Parties**

If the appellant or his representative does not appear on the day fixed for the hearing, the appeal shall be struck out on the application of the respondent. See **Order IV, Rule 1, 2 & 3**. If parties or their representatives fail to appear on the fixed day for the hearing, the court may, on being satisfied that the parties were duly served with hearing notice, strike out the

---

12 **Sharia Court of Appeal Rules, Abuja**
case on its own motion. See Order III, Rule 6\textsuperscript{16}. If the Respondent or his representative applies for an adjournment or does not apply for the appeal to be struck out, the court may grant an adjournment and if it does so shall give notice to the appellant of the date fixed for the resumption of hearing. See Order VIII, Rule 1 & 3\textsuperscript{17}. If the appellant or his representative fails to appear for the second time, and it is proved to the court that the summons was duly served in time, the court shall strike out the case. If the appeal is struck out upon the application of the respondent or his representatives or struck out for the non-appearance of either parties or their representatives, the court may re-list the appeal if the absented party, within a period not exceeding fifteen (15) days from the date of striking out, showed reasonable grounds for his non-appearance, the court may summon the respondent and proceed to hear the appeal. If the respondent or his representative fails to appear, the court may after satisfying itself that the summons has been duly served on him, hear the appeal and give judgment in his absence.

However, if the court is not satisfied that the summons has been duly served on the respondent or if the respondent or his representative satisfies the court that there were reasonable grounds for his failure to appear, the court shall fix another day and shall issue a fresh summons. If the respondent and his representative in question of maintenance or divorce is absent or their whereabouts are unknown or they are in a place where summons cannot be served on either of them, the court after satisfying itself as to such facts shall hear and give judgment accordingly.

**Hearing**

At the hearing of the appeal, the court shall peruse the record of proceedings of the court below as transmitted to it. See Order VIII, Rule 3\textsuperscript{18}. The parties or their representatives may address the court in support of their respective cases and in the course of any such address may read the whole or any part of the record of the court below and may comment on it. The party who begins shall have a right to reply to the speech or submission of the party/parties opposing him. See Order III, Rule 2\textsuperscript{19}.

The court shall re-hear or retry the case but if it shall be necessary for the purposes of elucidating or amplifying the record of the court below and

\textsuperscript{16} Ibid.
\textsuperscript{17} Ibid.
\textsuperscript{18} Ibid.
\textsuperscript{19} Ibid.
arriving at the true facts of the case, the court may re-hear or retry the case in whole or in part. The re-hearing or retrial shall follow the same process as trial at the lower court shall be conducted. The court in the process may:

a. Allow or require witnesses to be called whether or not they gave evidence before the court below;
b. order any reference to be made;
c. call for any document or other exhibit;
d. inspect any object or place;
e. call for and examine all original records of the court below;
f. adjourn the hearing from time-to-time and place-to-place;
g. do or order to be done anything which the court below has power to do or order; and
h. generally exercise any of the powers conferred upon it by Section 10 of the law. See Order III, Rule 3.

In the process of hearing an appeal before it, the appellate court shall be guided by the guidelines given by the Supreme Court that in claim before Native Courts, Area Courts or Customary Courts it is necessary to look at the substance, rather than at form of the writ or claim. The appeal court must not be too strict in regard to matters of procedure. The court must look at the whole proceedings to understand what the parties were fighting for. In the main, the appellate courts are mandated under Islamic law to look into the whole gamut of a case and see where justice of the case lies irrespective of whatever technicalities that may be involved. It is therefore not mandatory nor is it necessary for the court to rely solely on the grounds of appeal or issues raised therein. The court can go outside the grounds of appeal at anytime and stage provided there are enough materials upon which a just decision can be reached. Thus, the procedure under Islamic law is peculiar when compared with the Common Law.

An appeal lies from the Sharia Court of Appeal to Court of Appeal as of right in accordance with the Acts of the National Assembly and Rules of Court in any civil proceedings with respect to question of Islamic personal law. The decisions of the Supreme Court and Court of Appeal by virtue of Section 287 (1) and (2) of the Constitution of the Federal Republic of Nigeria are to be enforced by all courts with subordinate jurisdiction to that of the courts including Sharia Court of Appeal. In the same vein, “where a decision of the Supreme Court and Court of Appeal is in consonance with
Islamic law particularly when it concerns the interpretation of a statutory provision it will be binding on the Sharia Court of Appeal, that court shall not only be guided by it...". See Sa’adatu Mala Baba v. Mala Baba Mohammed.\(^{20}\)

### Challenging Court Jurisdiction in Islamic Law

The legal history of Nigeria reveals that colonialism established the superiority of Common Law over the duos of the Customary and Islamic Laws.\(^{21}\) The superiority so established has continued to wield prominence, priority and substantial preference for Common Law over the other two legal systems in the country. The same influence has so much impacted on the judges, parties and lawyers representing litigants as advocates before a Customary or Islamic Law court, handling customary or Islamic law matters, that their views, submissions and approach to determination of issues are usually informed by the common law philosophy.

What is responsible for this is that by training, both academically in the University and professionally at the Nigerian Law School, lawyers as advocates and judges are mostly pure products of Common Law. However, very few Nigerian legal practitioners as advocates before Sharia Courts have a grasp of the unique nature of the rules and procedure applicable in Islamic Law courts and “their appearance has been a clog in the wheel of the administration of Islamic justice; contrary to the belief that it would be lubricating oil to that wheel”.\(^{22}\) They usually deploy their deficiency or semi-skilled training in Islamic Law in their approach to how and when issue of jurisdiction (wilayah) should be raised and resolved in Islamic law proceedings. They are often guided or rather ‘misguided’ by the doctrines of common law on the jurisdictional matters. The question that must be resolved is whether Islamic law permits the court and litigants to adopt the approach by which issue of jurisdiction is resolved under the Common Law or not. This paper seeks to provoke further research on this fundamental issue of procedure for a decisive position to be arrived at on how it should be approached in the Islamic law courts.

There is a settled order of procedure that must be followed in the conduct, hearing and determination of cases in Islamic law courts. This order

---

\(^{20}\) (2007) 3 SLR (pt.iv) 184 at 201


does not favour any jump from one step to another for whatever reason howsoever. The Islamic law jealously guides this order so much that it qualifies as a principle that favours the proposition that the horse should not be put before the cart. Any decision can generally be set aside and declared a nullity for failure to follow necessary procedure under the Islamic law. See Afusat Abake v. Alhaji Isiaka Sewa ²³

The order can be explained as follows:

*If the two opponents (i.e. litigants) appear in court, the judge will make them sit safely side-by-side and he would then ask who the claimer is. And if he keeps silent until one of them starts exhibiting his case, there is no harm in that. And if the claimer or claimant finishes stating his case and evidence, he will then ask the defendant what he has to say in response to the case of the claimant. If the defendant confirms the claim, judgment is entered for the claimant. If he denies the case, then the claimant is asked to bring up his evidence…. *²⁴

It is therefore deducible from the above passage that there is a moment for the claimant/plaintiff to speak, state his case and produce his evidence just as there is a stage of the proceedings that the defendant can say and produce or bring up in whatever form evidence, whether in the form of law or of fact, that he has as defence. It should be borne in mind that a challenge to the jurisdiction of the court is a kind of defence in law that is opened to the defendant. Since the order preserved by Islamic law cannot be disrupted it would then mean that the defendant would have to wait for his turn before raising any challenge to the jurisdiction of the court.

Following and preserving the above stated order, the position of the Islamic law is that the defendant cannot raise the issue of jurisdiction anyhow and at any point or stage as it is done under the Common Law.

---
²³ (1995), Kwara State Shariah Court of Appeal Annual Report, p.30 at 33
defendant must wait until when it is his turn to do so and this is at the stage when he is putting up his own defence. He can bring up the issue as part of his defence. M.A. Ambali, in the case of Alhaji Issa Alabi v. Alhaji Salihu Kareem, extensively explains this position of the Islamic law. I am equally in agreement and will be adopted in the analysis to be made hereinafter in the following explicit words:

In Islamic law preliminary objections do not find the same place of prominence as obtained in other legal systems. That is if there is good reason for it to be entertained in the first instance.

The well-known established Islamic law procedure states:

A judge does not make a pronouncement until he hears the statement of claim and evidence fully from the plaintiff. He then asks the defendant if he has a defence to put up.

A court of Islamic law shall not adjudicate until it listens to all the complaints of the plaintiff/claimant and his/her evidence. It thereafter allows the defendant/respondent to present his defence. To talk of competence or otherwise before the claimant concludes his/her claim and proof is to cross the river before getting to it.

The practice of raising the preliminary objection with or without notice, as the case may be, does not find a ready accommodation in Islamic law. Everything a defendant/respondent has to say shall wait until the complainant puts up his claims and proof succinctly before the court. The respondent then has the whole right to react at the end of the submission of claim and proof by the plaintiff. See Alhaji Issa Alabi (supra) at p.101.

Interestingly, the above procedure seems to have the backing of the provision of the Qur’an if one considers the message in the verse where Allah (SWT) says thus:

O ye who believe! If a wicked person comes to you with any news, ascertain the truth, lest ye harm people unwittingly and afterwards become full of repentance for what

---

ye have done.26

The instruction given in the above verse requiring truth to be ascertained can be inferred to mean that a plaintiff should be allowed to state his case and not just be shut out by the claim of lack of jurisdiction of the court that may be made by the defendant.

It is instructive to note that the jurisdiction of Islamic law court can be challenged on various grounds such as incompetence of the parties, of the suit itself or of the court. See Abdullahi Ibrahim v. Baba Tapa27; Afusat Abike (supra) and Alhaji Mohammadu Mando v. Awawu Manu Joro28.

The Islamic Law Approach to Challenging Jurisdiction of the Trial Court

The starting point is to appreciate the fact that at the trial Islamic law courts in Nigeria, the claimant presents his statement of claim orally and in most cases such claim will become appreciated only after he has produced evidence in proof of his case. Without prejudice to the Islamic law proceedings’ amenability to written presentation of the claimant’s claim, combining the statement with the proof thereof in the open court is closer to attaining natural justice and its quicker dispensation. Therefore where that method is adopted there is no way and it would indeed be too premature to challenge the jurisdiction of the court at that stage. This is more so because under the Islamic law, it is the claim of the plaintiff or the claimant that determines jurisdiction. Raising a challenge to the jurisdiction of the court at the first contact with the court cannot therefore be proper. In the case of Olarongbe Jimoh v. AlHeri Idomi29, the determinant of the jurisdiction of Islamic law courts is explained as follows:

Regarding the determinant of jurisdiction, it is trite law that irrespective of whomsoever between the parties is adjudged as the plaintiff under the principles of Islamic law of evidence and procedure; it is the claim – da’wah- in the trial court that determines the jurisdiction of both the trial and appellate courts.

---

26 Surat Al-Hujurat;49:6
27 2004, Kwara State Shariah Court of Appeal Annual Report, p.41 at 47-48
28 2004, Kwara State Shariah Court of Appeal Annual Report, p.1 @2-5
29 1997, Kwara State Shariah Court of Appeal Annual Report, pp. 17-20
It therefore follows that rather than getting immersed with the serious issue whether it has jurisdiction or not, the first task of an Islamic trial court is to determine who among the parties before it qualifies as the claimant and who qualifies as the defendant so that he may ask the claimant so discovered by it to state his claim and produce evidence in proof of the claim before it allows the defendant to proffer his defence which may then bring up the issue of jurisdiction.

**How to Challenge Jurisdiction of the Appellate Courts in Islamic Law**

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides that appeals from the Shariah Court of Appeal shall lie to the Court of Appeal and finally to the Supreme Court. This is because when there is an appeal at either the Court of Appeal or Supreme Court on Islamic law matter, it is an appellate Islamic court at that moment and in such proceedings. Therefore, there is the need for an understanding of what obtains in these courts in raising the issue of jurisdiction to be engendered. It should be noted that the appellate Islamic law courts in Nigeria generally act on the record of proceedings coming from the lower courts which usually emanates from the trial court in determining the appeal before them. In the record so produced before the appellate court and if the trial had not jumped the procedure laid down for it to be followed by the Islamic law, the appellate court will have everything it requires, including the claim of the claimant, the evidence produced in proof of the claim and even details about the parties and the composition of the trial court itself. With this therefore, I see nothing wrong for the appellate court to raise or determine, if raised, the issue of jurisdiction before determining any other issue before it, as long as the issue so raised pertains with how the trial court conducted or determined the case.

**Recommendations**

The following are recommended:

i. Establishment of Shariah Courts of Appeal in all the States of the Federation. **Section 275 (1)** of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides thus:

---

30 Sections 233 and 240 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)
31 Order 20, Rule 1, Court of Appeal Rules 2011
33 Order XII, Rule 2, Sharia Court of Appeal Rules
There shall be for any State that requires it a Sharia Court of Appeal for that State.

Having established the same court in the Federal Capital Territory, Abuja; the Houses of Assembly in the states with majority of Muslim population are hereby called upon to extend the same gesture to other Muslims in the different States of the nation where there is none. The Muslims in those States always approach the Customary Law courts that are not learned in Islamic law and this wrong to say the least.

ii. Expansion of Jurisdiction of the Shariah Courts of Appeal. By virtue of Sections 262 & 277 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) the jurisdiction of the court is restricted to Islamic personal law. It is important to note, however, that the word “Shariah” connotes more than Islamic personal law. For emphasis purpose, the constitution has deprived the court the criminal jurisdiction given to other courts like the Area Courts, Magistrate Courts, High Courts, Federal High Court, Court of Appeal and the Supreme Court. Thus, Shariah Court of Appeal should be empowered to entertain criminal matters in accordance with the provisions of Shariah.

iii. Establishment of Federal Shariah Court of Appeal in all the States as the final court in Islamic law matters. There are lessons on this from Kenya, Ethiopia, Uganda, Sri Lanka and other countries.

iv. Affiliation of Area Court bench for judges who are learned in Islamic law to the Shariah Court of Appeal. This will allow our judges who are denied or deprived of or discriminated against from rising to the High Court bench. In this regard, the review and amendment of Area Courts Laws is recommended.

Conclusion

This paper has examined the length and breadth of the jurisdiction of Shariah Courts. It has been demonstrated that the Islamic law provides for its courts to take the issue of jurisdiction along with the determination of the case on its merit. It has also been revealed that with this approach the Islamic law is able to strike a balance in ensuring that justice is neither delayed nor rushed. The paper therefore challenges the courts in Nigeria to desist from unnecessary delay and longevity in the litigation period that is usually brought about by the issue of jurisdiction.
No court of law will be able to discharge its responsibility of justice dispensation to the litigants if it cannot ensure that justice is neither rushed nor delayed. The practice of raising issue of jurisdiction separately and determining same before any other thing, at the expense of determining the case on its merit, which is in vogue in courts in Nigeria, has been disclosed in this paper as detrimental to the ideal practice of justice. The ideal practice of justice which must be advanced and observed by any court is for justice to be dispensed as appropriate, which requires that neither must it be rushed nor delayed. The golden principle of justice dispensation cannot validly and justifiably be sacrificed for the mere need to ensure that courts do not engage in efforts in futility or in advancing compliance with the law on jurisdiction. If a case is determined on its merit and the court eventually found that the matter was frivolous, unwarranted and completely uncalled for in the first place, will the court be said, just for that reason, to have engaged in efforts in futility? If the answer to this poser will not be in the affirmative, then it is rather a misconception to say that simply because a court may eventually be found to lack jurisdiction, that that alone should make its efforts in determining a case on its merit without first taking the issue of jurisdiction to be in futility. This cannot be correct.

The conclusion therefore is that the Islamic law Rules and Procedure for challenging the jurisdiction of courts, which we have analyzed in this paper, is a worthy model and approach which ought to be adopted by all courts in Nigeria. The benefits of this to the courts, the parties and the society at large are unquantifiable as observed by Hon. Justice Niki Tobi, JSC (as he then was) in the case of A.P.C. Ltd. v. NDIC (Nig.) Ltd.\textsuperscript{34} Thus:

\begin{quote}
  The exercise is useful and becomes very handy in the event that the court wrongly ruled that it had jurisdiction. This helps in no little way in saving litigation period. Instead of sending the case back to the court to hear the matter because it has jurisdiction, a decision in the alternative will stop such a procedure.
\end{quote}

I thank you all for your attention.

\textsuperscript{34} (2006) 15 NWLR (pt. 1002) 404 at 443, paras B-D