

**RELATIONSHIP BETWEEN HEAD OF THE JUDICIARY (THE CHIEF JUDGE) AND OTHER HEADS OF COURTS (GRAND KADI, SHARIA COURT OF APPEAL OR PRESIDENT, CUSTOMARY COURT OF APPEAL) – SHARIA COURT PERSPECTIVE – being a paper presented by Hon. Justice Abdullahi Maikano Usman, Grand Kadi, Gombe State at a 2 day Roundtable for Heads of Courts held at Hon. Justice Aloysius Katsina-Alu Seminar Hall, National Judicial Institute, Abuja on Tuesday 9<sup>th</sup> April, 2019.**

It is my honour and privilege to be offered the opportunity to address this distinguished gathering of very high ranking members of the Judiciary. Permit me here first and foremost, to express my deep appreciation to the Administrator of our great Institute, **Hon. Justice R. P. I Bozimo, OFR** and the Internal Education Committee of the National Judicial Institute for considering me worthy to deliver this paper.

The Constitution of the Federal Republic of Nigeria under **Section 6 (1) and (2)** vest judicial powers of the Federation and States in Courts established and listed under **Sub-section (5)** of the same Section. The Section also granted powers to the National Assembly to establish Courts, other than those listed in **Sub-section (5)**, but add that such Courts established by the National or State Assemblies must have subordinate jurisdiction to the High Court.<sup>1</sup>

The judicial powers vested in these Courts are exercised at different levels through Judicial Officers appointed in accordance with the provisions of the Constitution. The Constitution designates the Judicial Officers as having further responsibility for manning the Court with one of them appointed as the Head of

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<sup>1</sup> See Section 4 (a) of the 1999 Constitution of the FRN (as amended)

Court in order to direct the management of the Court. These Heads of Courts include: The Hon. Chief Justice of Nigeria, the President of the Court of Appeal, Chief Judges of the Federal High Court, High Court of the Federal Capital Territory and the States, Hon. Grand Kadis of the FCT and the States, Hon. Presidents of the Customary Court of Appeal of the FCT and the States as well as the President of the National Industrial Court.<sup>2</sup>

The Heads of Courts at the various levels, in addition to their duties as Judicial Officers, head the Courts and perform administrative functions. This they do directly or through various offices established for that purpose. Some of the functions of the Heads of Courts are discharged by the Administrative Judges in the division, while bulk of it is discharged through the office of the Chief Registrar, Deputy Chief Registrar, and other staff and Secretary of the Judicial Service Commission/Committee. The administrative functionaries provide valuable advice and support to Heads of Courts.

### **HEAD OF STATE JUDICIARY**

Nigeria being a Country that practices federalism with a Federal Government at the centre and the federating states, our judicial system is a true reflection of it. The Judiciary is, therefore divided into Federal and State Judiciaries and each of them is independent from the other. The Federal Judiciary comprises of the Supreme Court, Court of Appeal, Federal High Court, High Court of the Federal Capital Territory, the Sharia Court of Appeal of the FCT and the Customary Court of Appeal of the FCT and National Industrial Court. While the State Judiciary comprises of

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<sup>2</sup> Section 230 (2) (a); 249 (2) (a); 265 (2) and 270 (2) (a) ibid

the Courts established under **Section 6 (5)** viz: High Court of a State, Sharia Court of Appeal of a State and Customary Court of Appeal of a State respectively. All of these Courts are headed by the “most senior” among the Judges and Kadis as the Head of the Court. Constitutionally these Courts are Courts of co-ordinate jurisdiction – meaning, no one is superior to another.

As this discussion focuses on the State Judiciary I shall leave out issues about the Federal Judiciary.

### **ORDER OF PRECEDENCE**

It should be noted, therefore, that the High Court of a State takes precedence over the Sharia Court and the Customary Court of the State. This point is important to avert cases of disagreement between the Heads of the Courts in the State. There is absolutely no need for argument as to the order of precedence as the Constitution has taken care of that. The Chief Judge is regarded as the Chief Judge of the State not of the High Court as it was provided under the 1979 Constitution. The Third Schedule, Part II, D, provides for a State Judicial Service Commission and it provided that the Commission/Committee shall be chaired by the Chief Judge of the State who is the Head of the High Court. The Grand Kadi of the Sharia Court of Appeal and President of the Customary Court of Appeal are members of the Commission.

Going by the above constitutional provisions there would be no rivalry on the matters of order of precedence between the Heads of Courts in the State. What is expected of them is co-operation in areas where their administrative functions overlap.<sup>3</sup>

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<sup>3</sup> Nwkei, P. K Relationship with the Chief Judge and the Judges in the superior Courts Induction Course Lectures for Newly Appointed Judges and Kadis 1993 University of Lagos Press.

Just like in the High Court of the State, it is traditionally always the most senior among the Kadis that becomes the Grand Kadi and the Head of the Sharia Court of Appeal. The scenario is the same in the Customary Court of Appeal. Therefore, it is possible that any of these two could be senior to the Chief Judge in terms of experience. Notwithstanding the seniority, the High Court of the State is given precedence by the Constitution and its head is recognised the Head of the Judiciary in the State.

### **RELATIONSHIP BETWEEN THE CHIEF JUDGE AND THE OTHER HEADS OF COURTS**

Having recognised the Chief Judge as the Head of the Judiciary, it is important to mention that the Chief Judge is the leader in the State Judiciary and therefore expected to give some measure of leadership among his brother Heads of Courts, and how he does this is a matter of leadership style. A good Head of the Judiciary should be able to carry his brother Heads of Courts along.

Leadership style differs. Some leaders like to wear the garb, playing god. Some think that a hard and ruthless leadership is the basis of obedience. Iron hand in leadership, when it snaps splinters to pieces, and more often than not, unable to come together again. Some leaders consider themselves servants of their followers. To their chagrin, it is often misrepresented or misinterpreted as a weak leadership. If carried too far it may negate effectiveness.<sup>4</sup> A good leadership must be based on consultation and consensus.

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<sup>4</sup> Ibid at p.56

The Head of the Judiciary must be patient, tolerant and courteous. He must be a man of absolute integrity and of impeccable moral rectitude. He must avoid treating his colleague Heads of Courts as his mere subordinates. In dealing with them arrogance and “head boy bossiness” must be avoided.<sup>5</sup> He must always be ready to see to the welfare of all Judges and Kadis of the State. Most importantly, the Head of the Judiciary must bear in his mind that the other Heads of Courts are leaders in their respective Courts. Therefore, he must not delve into their internal issues as that can undermine the respect of the Head of the Court concern.

It is the duty of the Chief Judge to protect the interest of all other Heads of Courts from the influences of the Executive and he must not use his influence to undermine the dignity of the other Heads of Courts before the Executive. He must note that, they have the right to approach the Executive on issues that concerns their Courts, and that is not meddling in his affairs.

As for the other Heads of Courts, they must recognise the Chief Judge as the Leader in the State Judiciary. They must always strive to work in harmony with the Chief Judge and among themselves without undermining the *esprit de corps*.

The Chief Judge should be allowed to handle the day to day administration of the Judiciary in general while Heads of Courts should be allowed to handle the day to day administration of their Courts without external influence.

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<sup>5</sup> Kawu S. (JSC) Relationship with Chief Judges Brother Judges *inter se* induction Course Lectures for Newly Appointed Judges and Kadis 1993 University of Lagos Press.

## **POSSIBLE AREAS OF FRICTION**

In all human relations there is always an area of friction. However, understanding those volatile areas helps in avoiding the possibility of the friction by diffusing such areas and smoothing them if they arise. The areas of friction depends on the State concerned.

1. **Management of Lower Courts** – While in some States there is difference between the authority responsible for the management of Magistrate Courts and that of the Sharia/Area and Customary Courts respectively. In some States all the inferior Courts are managed by the Chief Judge despite their peculiarity and differences in terms of jurisdiction and the applicable laws. This of course triggers friction between the Heads of Courts and the Chief Judge. In an ordinary clime as practiced by many States in Nigeria, Magistrates are undoubtedly managed by the Chief Judge, while the Sharia/Area Courts and the Customary Courts are managed by the Grand Kadi and the President of the Customary Court respectively.
2. **Allocation of monies due to the Courts** – The wordings of the Constitution of the Federal Republic of Nigeria is very clear in **Section 121 (3)** and it states as follows –  
*“any amount standing to the credit of the –*  
*(a) House of Assembly of a State; and*  
*(b) Judiciary;*

*in the Consolidated Revenue Fund of the State shall be paid directly to the said bodies respectively; in the case of Judiciary, such amount shall be paid directly to the Heads of the Courts concerned”.*

The emphasis here is on whom the amount shall be paid in the case of the Judicial Arm which is the Head of the Court concerned.

However, I am not insinuating that this friction exist in anywhere in any of the Nigerian States, but this is an issue that if not tackled now it will be a problem very soon. Therefore, it is my humble opinion that the Head of Court concerned means either the Chief Judge, The Grand Kadi or the President of the Customary Court of Appeal. Each of these Courts is an independent Court as far as the Constitution of the Federal Republic of Nigeria is concerned.

### **CONCLUSION**

The need for harmonious working relationship between the Chief Judges and other Heads of Courts is certainly *sine quo non* for an effective Judiciary at the State level. The relationship should be based on mutual understanding, respect and team work.

There is no one particular arm of the Judiciary that is superior than the other. As the Judiciary has a common goal which is to dispense justice, it becomes imperative that not only must there be harmony between the different Heads of Courts but this should equally transcends to all other Judges and Kadis in the State and the entire judicial workforce. As the society depends on the Judiciary, the Judiciary cannot afford to be a divided entity

but it should be a homogeneous Institution that administers justice according law.

I thank you for your patience.