

**THE NATIONAL WORKSHOP FOR AREA/SHARIA/  
CUSTOMARY COURT JUDGES**

**13<sup>th</sup> – 15<sup>th</sup> APRIL, 2021**

**THEME OF THE WORKSHOP:**

**“NURTURING HIGH STANDARDS OF JUDICIAL  
PERFORMANCE AT THE LOWER COURTS”**

**A PAPER TITLED:**

**“OVERVIEW OF THE JURISDICTION OF  
AREA/SHARIA/CUSTOMARY COURTS: SHARIA  
PERSPECTIVE”**

***PRESENTED BY:***

**HON. JUSTICE UMARU AHMAD LIMAN  
HONOURABLE ACTING GRAND KHADI, SHARIA  
COURT OF APPEAL,  
BAUCHI, BAUCHI STATE**

**AT**

**ANDREWS OTUTU OBASEKI AUDITORIUM**

**ON THURSDAY, 14<sup>TH</sup> DAY OF APRIL, 2021 AT  
10:30PM**

***ORGANISED BY:***

**THE NATIONAL JUDICIAL INSTITUTE, ABUJA.**



## **PROTOCOL**

### ***Bismillahi Rahmanir Rahim***

All thanks and praises are due to Allah, Creator of the whole world and the universe. Peace and blessings of Allah SWT Prophet Muhammad SAW, his companions and household and the generality of mankind till the last Day of Judgment.

My great respect is to His lordship, the Hon. Chief Justice of Nigeria and Chairman of both National Judicial Council and the National Judicial Institute, Hon. (DR) Justice Ibrahim Tanko Muhammad OFR, FNJI; the Chairman of Session. Also, permit me of special mention the Administrator of this great Institute my lord Hon. Justice R.P.I Bozimo OFR for the privilege given to me to present this paper.

Lastly, on behalf of myself, the Bauchi State Sharia Court of Appeal and the Bauchi State Judiciary in general, I wish to state that we are highly honoured. As such, once more, I accept the expression of appreciation for the honour. My gratitude also goes to Education Committee of the NJI, Distinguished all members of the high table and participants.

Permit me to stand on the existing protocols earlier and already established.

## **INTRODUCTION**

I am in receipt of a letter dated 2<sup>nd</sup> March, 2021 from the Administrator of the National Judicial Institute (NJI) Hon. Justice Roseline P.I. Bozimo OFR which convey to me the request to serve as a Resource Person at this great occasion of the National Workshop for Area/Sharia/ Customary Court Judges and also present a paper for the target participant and audience of the respected caliber of personalities of this noble profession.

The paper going by the topic **“Overview of the Jurisdiction of Area/Sharia/Customary Courts: Sharia Perspective”**, specifically targets my colleagues, the Judges adjudicating on Islamic Law and Islamic related matters at the lower court bench; an effort to better and aid the participants in the dispensation of justice in their respective jurisdictions.

In this regards, the paper is classified into various sub-topics as follows:

- a. Brief Historical Development of Sharia in Nigeria;
- b. Islamic Law (Sharia): Definition and Sources;
- c. Overview of the Jurisdictions of Sharia Courts, Upper Sharia Courts and Sharia Court of Appeal;
- d. Factors Determining Jurisdiction of a Court of Law;
- e. Conclusion.

## **BRIEF HISTORICAL DEVELOPMENT OF SHARIA IN NIGERIA**

The history of Sharia or Islamic legal system in Nigeria is as old as the history of Islam in the country because

Sharia is part of Islam. Both are inseparable from one another. Wherever Islam spread, it goes with its legal system. Islamic law in its total ramifications applied in what became the northern Nigeria before the advent of the British who tried to scrap it completely, but their failure to achieve this target led to its reduction from fully fledged legal system to the present ordinary law of personal matters called “Islamic personal law” while the criminal aspect of the legal system was totally expunged and replaced by the Penal Code.

According to History, Maliki School of Islamic law and jurisprudence had been in operation in the northern part of Nigeria for over 100 years before the advent of the colonial rulers. The pioneer Islamic empire in the Northern Nigerian was Kanem Borno when the 12<sup>th</sup> King of the empire Umm Jilmi bin Suleiman embraced Islam and consequently declared his empire as Islamic state with Arabic language as the means and medium of communication. On the other hand, with the commencement of Shehu Usman Danfodio’s Islamic reform from the year 1804 to the beginning of the colonial era in Hausa land, Sharia continued growing in full strength throughout the length and breadth of the Northern part of Nigeria without any omission, and to specifically mention, the followers of Danfodio and mentors became leaders of the principal towns like Kebbi, Gobir, Zamfara, Sokoto, Katsina, Zazzau (Zaria), Nupe, Illorin, Kano, Gwandu, Adamawa and Bauchi. These towns patterned their administration along with

the Islamic legal system and fully established Islamic legal system under which Sharia was the legal code and code of conduct in practice at the Alkali's courts with unlimited jurisdiction and fully in exercise of powers over the entire citizenry as rightly guided by the dictates of the Holy Qur'an and Sunnah of the Prophet Muhammad (SAW) and the system which applied, Islamic and Sharia Civil and Criminal laws were intact even with the emergence of colonialists only was regulated subject to some limitations such as powers of imposing punishment, and also to function under the supervision and control of the colonial officers. And, later on new courts established by the British introduced the English law, which however did not completely abrogate the predominant Islamic sharia legal system which was practiced, but subjected it to some limitation by confining its application of the sharia and made its jurisdiction limited to personal matters. The Amirul Muminin (The Commander of the faithful) had to wait for approval of the Resident or District Commissioner in the appointment of Sharia Judges and the latter was empowered to supervise the judges and review or transfer their cases.

In preparation for this paper presentation therefore, the resource person tried to examine the position of sharia courts, overview of jurisdiction, analyse the history as the topic suggested.

The methodology used in preparation for this study include references from various papers of different

workshops and also others which include those of some Departments of Islamic, Christians and Comparative Religious Studies of Universities, other original tests, other library sources all are utilized as tools of sourcing information.

### **ISLAMIC LAW (SHARI'AH) DEFINATION AND SOURCES**

Sharia is an Arabic word which literally means: “The straight path to be followed” as Almighty Allah puts it in the holy Qur’an where he says:

وجعلناك على شريعة من الأمر فاتبعها ولا تتبع أهواء الذين لا يعلمون

**Meaning:** “Then we put thee in the right way of religion, so follow that way and follow not the desire of those who know not.”

The way leading to watering place or spring where drinking water is fetched, and technically, it means the path that Almighty Allah in his wisdom established and ordained as the only path through which man can rightly be guided. The sources of Islamic Law are categorized into two namely: primary and secondary sources. The former is the original and the basic 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. The Qur’an is the Book of Allah, sent through the Seal of the Prophets, Muhammad which contains the words and commandments of Allah. 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 word. Sunnah on the other hand, is the words, deeds and tacit approval of the Prophet Muhammad 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. ***Masalih Al-Mursalah***: consideration of public interest.

Therefore, the Sharia to muslim represents his entire life, symbolizes his existence and gives him his identity. The Sharia shapes his entire personality and character. Sharia consists of two main divisions. The first division is known as Ibadat (acts of worship) consist of the Islamic pillars. The second division is known as mu'amalat (Human acts) which also further divided into Rites and transactions, to regulate acts and conducts between the people such as marriage, contracts, acts dealing with property as in sales and rents. Man's various societal systems like legal both (Civil & Criminal) also (Political & Economic system) find in the second division.

In view of that therefore, muslims wherever they find themselves have no other option than to seek for the implementation of that law as ordained for them by Allah SWT through absolute obedience to His messenger Muhammad SAW in the same vein Allah clearly declared in the Qur'an thus:

وما كان لمؤمن ولا مؤمنة إذا قضى الله ورسوله أمرا أن يكون له الخيرة  
من أمرهم ومن يعص الله ورسوله فقد ضلّ ضلالا مبينا

**Meaning:** “It is not fitting for a believer (Man or Woman when Allah and his messenger have decided a matter to have any option about their decision. If anyone disobeys Allah and his messenger, he is indeed on clearly wrong path”. (Q33.36)

The above quoted verse, clearly relevant to say that Sharia legal system is to the Muslims, and to be a Muslim one must totally and completely apply the Sharia to his daily life activities because Allah SWA in the Qur'an says:

يأيتها الذين آمنوا ادخلوا في السلم كافة ولا تتبعوا خطوات الشيطان إنه لكم عدو  
مبين

**Meaning:** “O you who believe, enter in to Islamic faith (wholeheartedly) and follow not the footsteps of Satan for he is to you and around enemy”. (Q2:207)

Various books on Islamic law and jurisprudence are full of the meanings and definitions of Islamic law (Sharia). Various definitions are attempted by the jurists and scholars of different ages. According to Abdurrahman I.

Doi, the term Sharia literally means a path to follow. It is a path not only leading to Allah, the most High, but the path believed by all muslims to be the path shown by Allah, the creator himself through his messenger, Prophet Muhammad (PBUH).

To Imam Hammuda Abd Al-Ati defined Sharia Islamic Law as “The body of those institutions which Allah ordained to guide the individual in his relationship to God, his fellow muslims, his fellow men and the rest of the universe”. In trying to define sharia, M. A. Ambali submitted thus:- the word Sharia is adopted by jurists of Islamic law for the ordinance that Allah ordains for his worshipers so that they may be faithful and striving towards where lies their salvation here in this life and hereafter”. According to Professor Abdallah Shehu Sokoto sharia is defined as “...an act of rules which regulate the conduct and affairs of people for settling all differences and avoiding all disputes”. It can be deduced from the above definitions and many others that sharia 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 life style known as Sunnah. It thus indicates that all the different commandments of Allah to mankind are essentially what formed part or whole of sharia.

# **OVERVIEW OF THE JURISDICTION OF SHARIA COURT, UPPER SHARIA COURT AND SHARIA**

## **COURT OF APPEAL**

Generally, in any legal system, the question of jurisdiction is at core of the operation of any jurisprudence. For the purpose of these audience, this paper will restrict itself to the overview of jurisdiction: sharia perspective, as it relates to Sharia Court Judges, but however, the paper cannot resist giving clear definition of what is jurisdiction.

According to English Dictionary, jurisdiction connotes the legal power, right, or authority of a particular court to hear and determine causes, to execute justice; judicial authority over a cause or class of causes; as, certain suites or actions, or the cognizance of certain crimes.

Jurisdiction is the pillar upon which the entire structure of any litigation stands; it's a backbone, a cornerstone of any litigation. Jurisdiction is desired for any court and cause. It is crucial and fundamental to any adjudication. Where jurisdiction is lacking, no matter how well prepared and how diligently conducted that proceeding would be equal to nothing.

Jurisdiction is crucial, fundamental, radical and pivotal to adjudication. If it is missing, then everything in the adjudicatory process would also 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. Jurisdiction is the power or authority of a court of law or tribunal to go into a matter and deliver a binding judgment. 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 starts to crumble; then, parties cannot be heard on the merit or otherwise of the case and that puts an end to the litigation unless and until issue of jurisdiction is resolved. It is also important to note that lack of jurisdiction cannot be waived 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 frame and limit of the court.
- c. The composition of the court.

- d. The commencement process upon fulfillment of the laid down condition of law 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) and an injunction about Hudud and Qiyas Allah SWT in Qur'an says in Surah Al Ma'idah:

وكتبنا عليهم فيها أن النفس بالنفس والأنف بالأنف والأذن بالأذن والسن بالسن  
والجروح قصاص فمن تصدق به فهو كفارة له ومن لم يحكم بما أنزل الله  
فأولئك هم الظالمون

Meaning: ***“We ordained therein for them: “Life for life, eye for eye, nose for nose, ear for ear, tooth for tooth, and wounds equal for equal.” But if any one remits the retaliation by way of charity, it is an act of atonement for himself. And if any fail to judge by (the light of) what Allah hath revealed, they are (no better than) wrong-doers.”***<sup>1</sup>

In the same vein, the jurisdiction such as family law, contract and commercial causes and so on, is primarily to allow for specialization of courts and enhance speedy

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<sup>1</sup> Suratul Ma'idah, verse 45

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 the case of *Mantari V. Dangaladima & Ors.* It is therefore settled that no court shall entertain a case or matter which it considers it has no jurisdiction or no 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.

In the circumstance therefore, 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 persons 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 Sharia Judicial System confer original jurisdiction in all civil and criminal matters in Sharia Courts. Their jurisdiction is 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 the non-muslim 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.

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 Sharia Court of Appeal in cases involving questions regarding Islamic personal law; and
- b. the High Court in all other cases.

The Sharia Courts have jurisdiction over several new offences beyond personal law, including theft, unlawful sexual intercourse, robbery, defamation and drinking alcohol. The Sharia Courts may impose punishments, pursuant to the provisions of the Sharia 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.

**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. 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. Sharia 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 Sharia 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 waqf, 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.

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: 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). This work agrees with the provision of the Constitution.

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.

Therefore, following the enactment of the Area Court in 1967, in the northern part of Nigeria, all questions relating to Islamic Law became operational and the limitation of the law as at that time in all the operational states were restricted to the Muslims personal law such as law of inheritance, marriage and such other muslim personal laws. A combination of Maliki School of Law and English Legal System operated side by side in the administration of criminal justice system through the penal code in the land, the criminal procedure code in the northern part of Nigeria and criminal procedure Act

covering the southern part of Nigeria over the years, in the administration of Sharia law has been adopted in some part of the northern states with the enactment of panel laws in addition to Islamic personal laws.

Generally, in any legal system, the question of jurisdiction can never be overemphasized, and can never be negotiated due to fact that it is at the core of the operation of any jurisprudence. But for the purpose of this paper and the area in which this paper is restricted, the paper will restrict itself to the application of jurisdiction under Sharia Law as it relates to Sharia Courts. However, the paper cannot resist temptation of emphasizing again and again on clear definition and what the jurisdiction appears. Erudite scholars and jurists have made clear on empathy of jurisdiction, and at this juncture, I would like to draw the attention of the participants of this great conference, especially those operating the Shariah Legal System, to the fact that the essence of Sharia is to maintain justice, equity and fairness in the same vein Allah SWT the most high, in the Qur'an says:

يأيتهاالذين آمنوا كونوا قوامين بالقسط شهداء لله ولو على أنفسكم أو  
الوالدين والأقربين إن يكن غنيا أو فقيرا فالله أولى بهما فلا تتبعوا الهوى  
أن تعدلوا وإن تلوأ أو تعرضوا فإن الله كان بما تعملون خبيرا

**Meaning:**

“O ye who believe: stand out firmly for justice, as witnesses to God, even as against yourselves, or your

parents, or your kin, and whether it be (against) rich or poor. For God can best protect both. Follow not the lusts (of your hearts), lest ye swerve, and if you distort (justice) or decline to do justice, verily Allah is well acquainted with all that you do.” Q4:135

Also in another verse in Suratul Ma'idah, Allah SWT says:

وإذا حكمت فاحكم بينهم بالقسط إن الله يحب المقسطين

**Meaning:** “If you judge, judge in equity between them, for Allah loveth who judges in equity”. G5:42

You should always remember that as judges, you are shepherds, and you are to account for all your deeds and misdeeds. As the prophet (SAW) says:

كلكم راع وكلكم مسئول عن رعيته, الإمام راع و مسئول عن رعيته,  
والرجل راع فى أهله ومسئول عن رعيته, والمرأة راعية فى بيت  
زوجها ومسئولة عن رعيته, والخادم راع فى مال سيده ومسئول عن  
رعيته, فكلكم راع ومسئول عن رعيته (متفق عليه)

**Meaning:** “Everyone of you is a guardian, and responsible for what is in his custody: The ruler is a guardian of his subject and responsible for them, a husband is guardian of his family and is responsible for it, a lady is guardian of her husband’s house and is responsible for it, and a servant is guardian of his master’s property and is responsible for it. Thus each one of you is a guardian and is responsible for his custody”.

A judge is therefore expected to act diligently in discharging his official duties. The office of a judge is a public office which must be handled with caution. You must stick to the ethics of the profession and make sure that you are firm for justice and fairness. In a hadith narrated by one of the prophet's companions, namely Abu Dharr, (May Allah be pleased with him), who says: "I said to the Prophet (Peace and blessing be upon him): "O Messenger of Allah, will you not appoint me to a public office? He stroke my shoulder with his hand and said: "Abu Dharr, you are weak and authority is a regret except for one who fulfills its obligations and discharges the duties".

### **Factors Determining Jurisdiction of a Court of Law:**

There are several factors that determine the jurisdiction of a court of law. One of them is the law that creates such a court. The usual practice is that laws creating courts do normally specify the jurisdiction of the courts. In the northern part of this country, we have laws like the Area Court laws of various states and the Sharia Court laws enacted by these states. There are similar laws in the southern parts of the country creating customary courts and assigning jurisdiction to them.

However, it should be noted that there are other factors that determine whether a court has jurisdiction to entertain a matter or not regardless of whether it has been provided for in the laws creating such courts or not. One of such factors is the fact that our constitution is

the ground norm, and its provisions are supreme. As such, whenever the constitution creates a court and assigned exclusive jurisdiction to such court, no any other law can rob the court of such jurisdiction. This is because the doctrine of supremacy of the constitution provides that any other law that is inconsistent with any provision of our constitution such law is void to the extent of its inconsistency. As such, the superior courts created by the constitution and assigned exclusive jurisdiction on specific matter no any other court shall have power to entertain same. These include the Supreme Court, The Court of Appeal, the Federal High Court, the High Court of the FCT, the State High Courts, the Sharia Court of Appeal of the FCT, the Sharia Court of Appeal of various States, the Customary Court of Appeal of the FCT, the Customary Court of Appeal of the States, the National Industrial Court, the Election Petition Tribunals, etc. All these courts have various jurisdictions as specified under the relevant sections of the constitution. Each court must be confined within its jurisdiction, and no any other court shall conduct proceedings on matters that fall under the exclusive jurisdiction of these courts.

Another factor that determines jurisdiction involves some enactments of the National Assembly which assign specific matters to specific courts. Example of such enactments includes the Land Use Act which gives jurisdiction to Federal and State High Courts in matters that relate to land in the urban areas and the land that

are covered by the Certificate of Occupancy. There are tenancy laws that also help in determining where such matters have to be instituted.

In a nutshell, what I am trying to relate to you is that your courts, being the lower bench, are expected to take the issue of jurisdiction with all the seriousness it deserves. Whenever you realize that your court lacks jurisdiction of entertaining a matter you should honorably decline jurisdiction, so the parties should go to the court that has jurisdiction. By doing this, you will save the court, the litigants and the lawyers appearing before you from unnecessary stress. Entertaining a matter where you are fully aware that your court does not have jurisdiction to entertain same is highly unethical, and must be avoided by all means.

Shariah Courts are courts that apply Islamic law. They are found in some northern states that adopt Shariah legal system. However, there are other northern states that have Area/Customary Courts. These courts are created by states that require them. In the southern states, we have Customary or Area Customary courts. I am not aware of any southern state that operates Shariah courts, despite the fact that some states in the south have a large number of muslims.

The general principle under Islamic law is that the authority establishing a court has power to give it jurisdiction. According to F. H. Ruxton, **“Every Kadi (Shari’ah Judge) must have separate jurisdiction, but**

**the Imam or sovereign can limit their jurisdiction in any way he pleases, either as to the district over which their power extends, or as to their powers of entertaining any judicial proceeding...”**

However, it should be noted that jurisdiction should be territorial or in relation to subject matter of litigation. Where a court’s territorial jurisdiction is limited to certain area, the court is not expected to litigate outside such area. According to Dr. Abdulkarim Zaidani, **“Specification of adjudication vide places means limitation of the judge’s jurisdiction which covers specified places, to the extent that the judge lacks jurisdiction outside such places.”**

Jurisdiction could also be limited by persons in such a manner that a judge is given power to adjudicate on one segment of persons.

For example, if it has been specified for the judge to adjudicate between foreigners in Abuja, or cases involving juveniles in Abuja, the jurisdiction of the judge in the given circumstances cannot be extended to cover those that are not mentioned. Decision of the judge in legal proceedings which are outside the specified scope, will not enforced.

It could be clearly observed that the position of Islamic law as regards to jurisdiction is generally in conformity with the conventional system.

As mentioned earlier, the jurisdiction of these courts in our country is usually provided by the laws creating the courts. For example, there are Area Court Laws, Sharia Courts Laws and Customary Court Laws various states of the federation. In Bauchi State for example, there is the Shariah Courts (Administration of Justice and Certain Consequential Changes) Law, 2001 which provides for the jurisdiction of Shariah Courts in Bauchi State under section 5 thus:

**“5. (i) Subject to the provision of section 46, section 251, section 285, paragraphs 15 (4) and 18 of Schedule 5 of the Constitution and any other provision of the Constitution vesting exclusive jurisdiction in any court or tribunal established under the Constitution, but without prejudice to the provisions of section 272 of the Constitution and any other law vesting jurisdiction in any court that derives existence under the Constitution, and notwithstanding the provision of section 3 (1) & (2) of the Penal Code Law, Cap 108 Laws of Bauchi State, the Sharia Courts shall have jurisdiction and power to hear and determine:**

- (a) Civil proceedings in Islamic Law in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim (due to an individual or individuals or the state) is in issue, or**
- (b) Criminal proceedings in Islamic Law involving or relating to any offence, penalty,**

**forfeiture, punishment or other liability in respect of an offence committed by any person or against the state.**

**(ii) The State House of Assembly shall enact laws to establish offences and their punishments, and the procedure for trials in criminal matters.**

**(iii) The Sharia Court subject to provision of this law, shall have jurisdiction and power over the following persons:**

- (a) All persons professing Islamic faith, and**
- (b) Any other person(s) who do not profess the Islamic faith but who voluntarily consent to the exercise of the jurisdiction of the Sharia Courts under this law.”**

There are similar provisions in all other northern states that adopt the implementation of Sharia legal system. What should be noted here is that the law creating these courts has made sure that there is no conflict with other enactments of the national or state Assemblies.

From the above provision, it could be seen that the person that could be compelled to appear before Sharia Courts in northern Nigeria are persons professing Islamic faith. Any other person could only be subject to the jurisdiction of Sharia Courts after obtaining their consent, which must be given in writing.

The provision also does not limit the powers of the Sharia Courts in terms of financial considerations as is applicable to some Area or even Magistrate Courts. This means that so long as the litigants profess Islamic faith, they do consent to the jurisdiction of Sharia Courts, and the subject matter of litigation falls within the jurisdiction of a Shari'a Court, then the court can entertain a matter even if it involves huge sums of money. With regards to criminal cases, Sharia Court can even pass death sentence so long as the parties involved fall under the jurisdiction of these courts.

The Lower and Upper Sharia Courts can be constituted with a sole judge. The Lower Sharia Courts have jurisdiction to entertain matters at first instance, while the Upper Sharia Courts have jurisdiction to entertain matters at first instance and they can entertain appeal arising from the decision of the lower Sharia Courts.

The Territorial jurisdiction of Sharia Courts in Bauchi State in criminal matters, whether Lower Sharia Court or Upper Sharia Court is limited to the local government in which the court situated. This applied to both first instance and appellate. This implies that where a cause of action occurs in an area, a Sharia Court located in another local government area cannot entertain such a matter for lack of jurisdiction.

## CONCLUSION

Gentlemen, I am sure that at this juncture, you all realized the paramount effect of jurisdiction in the exercise of judicial function. It's the bedrock of all trials, no matter how beautiful a trial is conducted will amount to a nullity, once the Court lacks jurisdiction, **Madukolu V. Nkemdilim** is a popular case of reference.

As such, I wish to conclude by first and foremost, calling the attentions of judges to be sure that they fully prepare and appreciate the case before them and also ascertain before they delve into trial, as stated in Tuhfa Matanil – Asimiyya, thus:

وليس بالجاز للقاضي إذا لم يبد وجه الحكم أن ينفذا

**Meaning:** “It is illegal for a judge; When he has not appreciated the nature of the case to begin hearing (it).”

This is very important as jurisdiction is determined by the pleadings therein. It is the statement of the claim that will reveal the venue of the transaction, its nature and the amount value involved; the parties and their status, their locus standi, which are all components of jurisdiction. This will help the judge to understand the nature of the case and whether the court is a court of competent jurisdiction to entertain the matter.

Secondly, Judges should be diligent enough, especially in their listening skill for them to appreciate issues raised before them. Judges should fully understand that the lawyers, the Police and Courts are kin to common actors

in a theatre. Hence Judges should avoid misunderstanding them as the effects may be adverse. Only cordiality will boost the morale of their relationship to appreciate each other.

Thirdly, Judges should understand that because of the role jurisdiction plays in trial, its issue shall be raised at any stage of the trial, and whenever it surfaced, it must be determined there and then: Refer to the case of **Unguar Garji Vs. Unguar Garji**. Therefore, Judges should be prudent enough to notice an issue of jurisdiction where it is not raised by lawyer or contending party even *Suo – Motu*, as it is allowed under Islamic Law. See the case of **Ahmadu Sidi Vs. Abdullahi Sha'aban**; So that the issue can be determined at preliminary stage, for him to rest himself of futile exercise.

Fourthly, it is imperative to take cognizance of the fact that each case is distinct to the other, hence issue of jurisdiction may come up frequently, in almost all cases, so judges must be ready to face the rigors of the bench, by giving listening ears to the preliminary objectives on jurisdiction.

Judges are not expected to be lazy, therefore strive to be update with your libraries, so that nothing will traumatize your minds in courts. Thank God with the era of globalization, the wizard Google is available to intercept and furnish you with all data instantly.

Finally and again, I wish to thank the highly esteemed NJI for finding me suitable and resourceful to contribute in this capacity, to add my voice on the overview of this most important topic, “jurisdiction”.

Thank you for listening.

**HON. JUSTICE UMAR AHMAD LIMAN  
HON. ACTING GRAND KADI  
SHARIA COURT OF APPEAL, BAUCHI STATE**

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