

**AN OVERVIEW OF THE JURISDICTION OF  
AREA/SHARIA/CUSTOMARY COURTS**

**BEING A PAPER PRESENTED**

**BY**

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**AT THE**

**VIRTUAL NATIONAL WORKSHOP**

**FOR**

**DIRECTORS AND INSPECTORS OF AREA/SHARIA/CUSTOMARY  
COURTS, 20<sup>TH</sup> – 22 APRIL, 2021.**

**ORGANISED BY**

**NATIONAL JUDICIAL INSTITUTE, ABUJA**

**BETWEEN**

**TUESDAY 20<sup>TH</sup>, WEDNESDAY 21<sup>ST</sup> AND THURSDAY 22<sup>ND</sup> APRIL,  
2021.**

## *Bismillahi Rahamanir Rahim*

### **PREAMBLE:**

All praises, glorification and adorations belong to Allah the Lord of the Universe. May his peace and blessing be to his noble prophet Muhammad (SAW) his house hold, companion and the generality of the believers till the Day of Judgment.

However, it is a duty to a Muslim to show his appreciation for an Honour accorded him by his fellow human beings.

*“He who does not appreciate mankind (for an Honour done to him) does not appreciate or give thanks to Allah.”*

I therefore, on behalf of myself and the FCT- Sharia Court of Appeal hereby sincerely express my gratitude and appreciation to the administration of this great institute N.J.I (National Judicial Institute) on the leadership of my Lord Hon. Justice R.P.I Bozimo OFR, (the Administrator), for giving me this opportunity to present this paper through virtual National Workshop.

### **INTRODUCTION:**

The title of the paper is (Overview of the Jurisdiction of Area Court/Sharia/Customary Court) the target of the paper is to discuss the Jurisdiction of the Judges adjudicating at the lower Courts. In this regard, it is my view that the following sub topics have to be discussed and treated to achieve aim of the topic.

1. Definition and Source Jurisdiction
2. Overview of the Jurisdiction of Area Court/Sharia Court and Customary Court.
3. Conclusion
4. Observation

## **1. DEFINITION AND SOURCE OF JURISDICTION;-**

The word Jurisdiction defined literally as *the official power to make legal decisions and Judgments.* 1

But by Law the word Jurisdiction defined in the words of Ben O. Igweniyi.

*“Jurisdiction is the power or authority of a Court of Law or Tribunal to into a matter and deliver abiding Judgment”*2

Basically the source of Jurisdiction of every Court is either constitutional or statutorial. For instance Area Courts, Sharia Court & Customary Courts are having their Jurisdiction from state laws establishing them. For example **section 2 of the Area Court edict 1967** as applicable in the North. Provide that, *every Area Court shall exercise the Jurisdiction conferred upon it by or under this Law with such area and to such extent as may be specialized in its warrant.*

Section:1412) provide 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:150) made distinctions 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 Area Court.

Now in the FCT Area Court Rules 2010 the above relevant

section/ provision can be found at Part III **Section: 10 sub section (1) and (2) section: 11 sub section: (a) and (b) OF THE REPEAL AND ENACTMENT ACTS OF AREA COURT CAP-477**

But on the other hand, the Sharia Court Laws of the Northern states Sharia Judicial system conferred original Jurisdiction in all Civil and Criminal Matters on Sharia Courts so also is the

*1. Cambridge English Dictionary*

no Jurisdiction is to be exercised unless he gives a written consent. Likewise in Criminal cases where the accused are jointly Muslims and non Muslim the Jurisdiction of the Court is restricted to the Muslim only. See, **Section: 5 of Sharia Courts law.**

While in case of customary Courts too, where they exist are creatures of statutes of laws promulgated by the various states on various grades of Customary Courts. For example **Customary Courts laws, 2010 of Anambra state (Section: 12)** gives Civil and Criminal cases and matters Jurisdiction to the Customary Courts of the state.

**2. OVERVIEW OF JURISDICTION OF AREA COURTS /SHARIA COURTS AND CUSTOMARY COURTS.**

Looking at the topic and the time given for presentation of the paper it will be difficult to deal with the topic vividly because it is very vast term the multiplicity of the laws and rules governing the Area Court, Sharia Court and Customary Courts in the thirty six states and FCT Abuja make it difficult to fully discuss the topic as far as the lower Courts of the above mentioned categories are concerned in Nigeria.

Jurisdiction is the life blood of any adjudication it is very fundamental, crucial, radical and pivotal to every adjudication. If it is missing then everything in the adjudicatory process would be equal to nothing. Jurisdiction is the foundation upon which every Litigation laid. The Jurisdiction of the Court is determined by the plaintiff's claim as disclosed on the writ of summons, or the statement of claim.

Therefore, once a party, usually defendant, shows that the Area Court has no Jurisdiction the foundation of the case crumbles then parties cannot be heard on the merit or other wise of the case and that put an end to the Litigation.

For a Court of Law or Tribunal to have Jurisdiction to hear and determine any matter before it. It must satisfy these conditions or have the following ingredients.

- (a) It must be properly constituted as to the number and qualification of its membership.
- (b) Any condition precedent to its existence of Jurisdiction must have been fulfilled.
- (c) The subject matter of the case must be within its Jurisdiction.
- (d) The case or matter must have been brought to the Court in due process of the Law. See, MADUKOLU V. NKEMDILIM (1) see, also DELLUCH V. S.B.N (2) NNPC V. SIB Consortium Ltd (3).

As stated above one of the prerequisites of a Court in the exercise

of its Jurisdiction is that the subject-matter of the action must be within the Jurisdiction and there should be no feature in the case which prevents the Courts from exercising the Jurisdiction. But where 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. (4)

It is therefore settled that no Court shall entertain a case or matter which it considers it has no Jurisdiction or not sufficient power to try, but shall strike out the matter for the Court of competent Jurisdictions or power to entertain same.

1. (1962) - 1 ALT NLR/1962 SCNLR 341
2. (2003) - 9 NWLR Pt 842 Pg 1
3. (2000) - 11 FWLR Pt 150 P- 1006

## JURISDICTION OF AREA AND SHARIA COURTS

As I mentioned earlier in discussion the source of Area Court, Sharia Court and Customary Court Laws, in Nigeria. Area Court, Sharia Court, and Customary Court are getting their Jurisdiction from state Laws establishing them.

However, the Sharia Court Laws of the Northern States, Sharia 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 courses 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 Muslim, the Jurisdiction of the Court listed to the Muslim only see, **section 5 of the Sharia Court Laws.**

➤ **UPPER AREA AND UPPER SHARIA COURT**

These are Courts found at the Northern part of Nigeria. They are styled as Upper Area Court and Upper Sharia Court. It is pertinent to note that since year (1999) the Sharia Legal System introduced within twelve states of the Northern Nigeria namely; Zamfara, Sokoto, Kebbi, Kaduna, Katsina, Niger, Jigawa, Kano, Gombe, Bauchi, Yobe and Borno State. Upper Area Court in those states are now called Upper Sharia Courts while the other Northern States are remain as Upper Area Courts. Upper Area and Upper Sharia Courts have unlimited Jurisdiction.

However, both Upper Area Courts and Upper Sharia Courts have equal Jurisdiction as Court of first instance and also as appellate Courts with power to entertain appeals arising from the decision of Area Court and Sharia Court except in FCT – Abuja where Appeals from the Area Courts and Upper Area Courts are going direct to the FCT- Sharia Court of Appeal.

**Section: 53 (2) of Area Courts Laws 1967 provide that;**

***Any party aggrieved by decision or Order of an Area Court may appeal to;***

***(a) Sharia Court of appeal in cases involving questions regarding Islamic Personal Law.***

***(b) The High Court in all other cases.***

It is pertinent to note that the Sharia Court in the above mentioned

states where Sharia Law System was adopted have Jurisdiction over several new offences beyond Muslim Personal Law, therefore Sharia Penal Code Law (SPCL) include death punishment, forfeiture and distraction of property, imprisonment detention as a reformatory, fine, canning (Flogging) amputation, retaliation, blood money, restitution, reprimand, public disclosure, boycott exhortation, compensation, closure of premises and warning among others.

### ➤ AREA AND SHARIA COURT

These are the Courts of first instance; they have original Jurisdiction in all Civil and Criminal matters. Their appeal in Muslim Personal Law goes to Sharia Court of Appeal, of the state while their appeal in Criminal and other civil matter go to High Court of Justice of the State. They are Court of summary Jurisdiction.

### ➤ CUSTOMARY COURTS

These Courts with their various categories in the states they are existing are having original Jurisdiction in Civil matter, Criminal matter and Chieftaincy matters and Land matters relating to the customary right of occupancy in some state. e.g

Anambra State Customary Court have unlimited Jurisdiction in Land matter and Land causes. See,

**CUSTOMARY COURTS LAWS 2010 OF ANAMBRA STATE (SECTION 12).**

Also in River State Customary Courts have unlimited Jurisdiction on Land matters and Land causes related to the customary right of occupancy and procession. Likewise chieftaincy causes and matters Customary Courts have unlimited Jurisdiction. See, RIVER



## STATE CUSTOMARY COURTS MATTERS NO: 3 2014 FIRST SCHEDULE (SECTION 6 (1)).

Customary Courts are also Court of summary Jurisdiction. Their appeal is going to Customary Court of Appeal of the State and High Court of Justice of the State.

### **3. CONCLUSION:**

This paper tried to examine the length and breadth of the Jurisdiction of Area, Sharia and Customary Courts. The paper demonstrated that Jurisdiction is back born of every adjudication in those Courts, absence of it rendered the proceedings, Judgment and Order given by the Court nullity no matter good it is. The paper revealed that those Courts Area, Sharia and Customary Courts have different level and wideness of Jurisdiction depend on the state and Laws where the Court derives its Jurisdiction. For that no Court of Law will be able to discharge its responsibility of Justice Dispensation to the Litigation if it cannot ensure that Justice is neither rushed nor delayed. The paper shows that raising issue of Jurisdiction and determining same before any other thing is the right and existing practice in Nigerian Courts.

The Jurisdiction of those Courts made them to be closer to the common man (Masses) and deal with every day to day matter. A close looking to their Jurisdiction shows that they are the Courts having Jurisdiction on Matrimonial causes and matters on Islamic Marriage under Islamic and Customary Laws, issues of inheritance and administration of estate under Islamic and Customary Laws and they also have the Jurisdiction to deal with issues pertaining Land in non Urban Areas.

#### **4. *OBSERVATION:***

Being those Courts Area, Sharia, and Customary Court so closer to the masses and deal with every day to day matter, there is much need to increase their Jurisdiction to accommodate minor offences such as minor traffic and sanitation offences which do not require custodian sentences. Also there is need to cover the recovery of premises Jurisdiction because they are Courts that could be found in remote areas.

I finally wish to thank you all, and once again the Administrator of this great Institute (National Judicial Institute) for this wonderful opportunity given to me to present this paper. May God bless you all.

