SHARIA COURT OF APPEAL AS EFFECTIVE JUSTICE DELIVERY CHANNELS

BY

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(IN THE NAME OF ALLAAH, THE BENEFICENT, THE MERCIFUL)

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PREAMBLE

Permit me to begin by expressing my profound gratitude to the Administrator of the National Judicial Institute (NJI); his lordship, Hon. Justice Salisu Garba Abdullahi and his esteemed management team, especially the Directorate of Studies, for the rare opportunity given to me to be one of the resource persons at this year's All Nigeria Judges Conference, scheduled between 13th and 17th November, 2023 .

By a letter of invitation, dated 13th September, 2023, sent to yours truly and signed by the respected Administrator, this year conference has a general theme which reads: ***"Strengthening Judicial Commitments to the Rule of Law and Democracy"***. In the letter, I have been requested to present a paper on the title ***"Sharia Court of Appeal as Effective Justice Delivery Channels"***.

It is my firm conviction that a request to assess the effectiveness of something – as in the instant case, is an invitation to hear the view or opinion of a speaker over the subject matter, which opinion may be subjective and relative to the indices or parameter of assessment. Thus, after the introduction of the topic of discuss, I have tried to look at the key terms in the topic before tracing the history of the creation of Sharia Court of Appeal Nigeria. I have periscoped its establishment presently as well as the jurisdictions statutorily conferred on it.

Thereafter, I examined how the existing Sharia Court of Appeal has fared and effective in the exercise of its jurisdiction, of course, expressing concerns on the limitations and other clogs that the statutes and policies have placed thereon. I eventually provided some stepladder on how the Court could be more effective as a channels of justice delivery, in addition to a call for a constitutional reform in that regard.

INTRODUCTION

I begin by saying that one of the most commonly known channels by which justice is administered or delivered to the people is through the establishment of courts. In Nigeria, the judicial powers of the Federation or the States, as the case may be, are statutorily vested in the courts of superior record established by the Constitution[1] of which Sharia Court of Appeal is one of such courts. As listed in the Constitution, the courts are –

(a) the Supreme Court of Nigeria;
(b) the Court of Appeal;
(c) the Federal High Court;
(d) the High Court of the FCT, Abuja;
(e) a High Court of a State;
(f) the Sharia Court of Appeal of the FCT, Abuja;
(g) a Sharia Court of Appeal of a State;
(h) the Customary Court of Appeal of the FCT, Abuja;
(i) a Customary Court of Appeal of a State; and
(j) the National Industrial Court.[2]

In hierarchy, it is noteworthy that besides the Supreme Court and the Court of Appeal, all the other superior courts of record are of coordinate jurisdiction and the said jurisdiction is exclusive to each of the courts. It is also to be noted that the establishment of High Court, Sharia Court of Appeal and Customary Court of Appeal in the Federal Capital Territory (FCT), Abuja is equally replicated in the States, to exercise the jurisdiction conferred on those courts in the States of the Federation. Importantly also, of the said courts of coordinate jurisdiction, only the Sharia Court of Appeal and the Customary Court of Appeal have no constitutional original jurisdiction.

The Constitution further permits the establishment of such other courts, either superior or inferior, as may be authorized by law to exercise jurisdiction

1. Section 6(4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)
2. Ibid.

on matters with respect to which the National Assembly or a State Assembly may make laws.[3]

Thus, the Sharia Court of Appeal that is the subject of focus in this paper, is a superior court of record mandatorily established in the Federal Capital Territory (FCT), Abuja and optionally established in some other States of the Federation to exercise the jurisdiction vested on it. This paper therefore seeks to analyze the effectiveness of the exercise of its jurisdictions among the channels put in place for justice delivery in Nigeria.

DEFINITIONS

Attempt shall be made to examine, *albeit* briefly, the meaning of some key terms in the title of this paper. As stated in the introduction, Sharia Court of Appeal refers to a court of superior record in Nigeria. By its nomenclature, it is a conventional court established to entertain appeals emanating from the decision of the courts of first instance on matters of Islamic law otherwise known as *Sharee'ah*. The application of the law (*Sharee'ah*) is mandatory on every person who professes Islamic faith, otherwise called *Muslim*. The totality of all affairs of a *Muslim*, including dispute resolution, must be regulated by *Sharee'ah* (Islamic law).[4]

Allaah (SWT), the Creator of man, has made *Sharee'ah* a complete, all embracing and comprehensive legal system, covering all aspect of a Muslim's life and not limited only to matters of faith or theology.[5] The *Sharee'ah* generally *inter alia* covers a Muslim's faith ('*Aqeedah*), worship ('*Ibaadah*), interpersonal relationship (*Mu'amalah*), crime and punishment (*Hudud* & *Jinayah*), family relationship (*Nizaamul 'Usrah*), ethics and morality ('*Akhalaaq*) etc. However and as will be seen later in this paper, the affairs of Muslims allowed statutorily in Nigeria to be so regulated by *Sharee'ah* in the conventional courts of first instance and appellate courts, is limited to matters

3. Ibid.
4. Qur'aan, chapter 2:208 – "O believers (Muslims), come entirely to Islamic total submission...."
5. Qur'aan, chapter 6:38 – "....nothing has been left uncovered in the Book (the Qur'aan)..."

relating to personal affairs, that is, matters over which Islamic personal law applies.

Another key term of the title under consideration is "effective". The adjective "effective", is used to qualify something carried out or done to satisfaction. The dictionary meaning of the word "effective" includes producing a decided, decisive or desired effect or a result that is impressive, striking or operative.[6] Another dictionary[7] defines 'effective' to means a state of success in producing a desired or intended result or fulfilling a specified function in fact.

As for justice delivery, it entails giving each person his/her right and doing so without delay. It is a basic principle that justice delivery also involves treating all persons equitably in the eyes of the law. For instance, in the Magna Carta[8] document, it was stated that: "To no one will we refuse or delay right or justice." Hence, justice delivery is a mechanism put in place by the State or Government to afford any aggrieved person with the opportunity to get remedy, reprieve, respite or redress for the grievance, damages or injury he has suffered. It is also the securing of justice by enforcing law as established for the desired purpose, in other words, it means fulfilling the desire of the law, as no law should ordinarily be unjust.

Further still, all the processes of making claim/complaint, enquiry or investigation of same, examination of claims/charges and/or proof, appreciation of evidence to back a right being claimed, award of punishment/reward or compensation to victim and so on, are all components of and form part of what constitute justice delivery in a system, Sharia legal and judicial system inclusive.[9] Thus, for justice delivery system to function in a proper manner, its steering wheel must necessarily be the rule of law, natural justice, neutrality,

6. Merriam Webster online Dictionary.
7. Offline Advanced English Dictionary.
8. The United Kingdom document was issued in June 1215 and was the first writing that asserted the principle that the king and his government was not above the law.
9. Under Sharee'ah, due diligence and effective investigation of claim is predicated on the injunction contained in the Sunnah (precepts of Prophet Muhammad, SAW) that says – "Were everyman given his claim (without asking for proof), one will claim the property and blood of another. But proof is on he who asserts and oath of denial on he who rebuts. "

قال صلى الله عليه وسلم: لو يُعطى الناسُ بدعواهم لأدّعَى رِجالٌ أموالَ قومٍ ودِماءَهم، لكن البينةُ على المدّعي واليمينُ على من أنكرَ.

due supervision, among others, as justice delivery system will only be said to function satisfactorily when it is rendered through a channels that is accessible, affordable, speedy, fair, efficient and reasonable.

What is deducible from the foregoing definitions is that we are seeking to quarry the effectiveness of the establishment of the Sharia Court of Appeal as a channel through which justice is being delivered. How is the court faring in term of the desired or envisaged success recorded in the exercise of its vested jurisdictions? But first, how did the court come about?

CREATION OF SHARIA COURT OF APPEAL

Nigeria is a country steeps in pluralism and multiplicity in almost all its facets. Ethnic wise, there is the record of over 250 tribes and ethnics in Nigeria, while on the religion side, Islam and Christianity are the two predominant religions in the country. However, there are also several other traditional religious practices across the country. The same pluralism similarly applies to our legal and judicial systems, where common law/English law[10], Islamic law and a variety and diverse customary laws are being operated in a unified system.

While it could be safely said that the English legal system was received, accepted and operated in Nigeria through the British colonization of the country, the customary legal system is the different custom and practices that over the years have assume the status of law of the indigenous ethnic people of the various parts of the country.[11] However, Islamic law (*Sharee'ah*), which is different and distinct from customary law[12], is a religious law that has it sources primarily from the *Qur'aan* and *Sunnah* (the legal precepts set by Prophet Muhammad, SAW), and other secondary sources.[13]

10. Also regarded as Christian law.

11. S. Y. Abubakar: The Role and Development of Customary Law in the Nigeria Legal System. In the NJI Law Journal, Vol. 3 of 2010, pgs. 25 – 26.

12. See ***Alkamawa V. Bello (1996) 6 SCNJ 126 at 136***; where Per Wali, JSC held that: "Islamic law is not the same as customary law as it does not belong to any particular tribe. It is a complete system of universal law, more certain and permanent and more universal than the English common law."

13. The secondary sources of *Sharee'ah* include: '*Ijmah* (consensus), *Qiyas* (juristic/analogical deduction), *Ijtihad* (personal reasoning), *Maslah* (common good), *Istihsan* (juristic preference), *Istishaab* (presumption), '*Urfu* & '*Aadah* (custom & tradition), etc.

It (*Sharee'ah*) is the law applicable to Muslims only[14] and as stated earlier on, it must be allowed to regulate the affairs of Muslims in its entirety. It is a universal law[15] that is not limited to any ethnic, tribe, colour, race or nation. It is the law that is applicable in the Sharia Courts or any other courts of first instance sitting over Islamic personal law matters, as well as in the Sharia Court of Appeal, which is the court in focus.

1956, a Moslem Court of Appeal was established in the Northern Nigeria to hear appeals from the decisions of Native Court in both civil and criminal cases governed by Islamic law. This was done to protect Islamic law from encroachment as a result of appeals on Islamic law matters from the Native Courts going to the High Court applying English law. However, some of the problem faced by the Moslem Court of Appeal included its appeal further going to the High Court,[16] hence, there was agitation for a specialized Court with no such restriction.

The Court that is today known as Sharia Court of Appeal was established on 30th September, 1960, that is, on the eve of the Nigerian independence. The court replaced the *hitherto* Moslem Court of Appeal, which was an inferior court with jurisdiction limited to Islamic personal law. The Sharia Court of Appeal was established *vide* the Sharia Court of Appeal Law, No. 16, Laws of Northern Region of Nigeria, 1960. This Law subsequently became Cap. 122 in the 1963 Republican Laws. The court at inception was granted exclusive jurisdiction and finality status, but this was later brought to price. The court was not conferred with jurisdiction on criminal appeals, and with respect to civil appeals, it was limited only to cases bordering on Islamic law. So, appeals in other civil matters and criminal matters go to the High Court.[17]

14. See ***Wali V. Ibrahim (1997) 9 NWLR (Pt. 519) 160***. Also section 3 of the Sharia Penal Code Law No. 10 of 2000 of Zamfara State which made application of Sharee'ah specifically applicable to Muslims as against non-Muslims. Kano and other State Sharia Penal Code Laws have similar provision. See also ***Tambura V. Tambura (2016) 4 SQLR (Pt. IV) 662***.
15. Qur'aan, chapter 34:28 – "And we have not sent you, Muhammad SAW (with *Sharee'ah* message), except to the entirety of mankind…." **وما أرسلناك إلا كافة للناس.....** . See also Qur'aan, chapter 21:107.
16. E. A. Keay & S. S. Richardson: The Native and Customary Court in Nigeria (1966) Pgs. 57 – 58.
17. A. S. AbdulYakeeen (2020): History and Development of Judiciary in Kwara State (1960 – 2020).

The attempt to pacify this concern led to the establishment of Native Court Appellate division of the High Court, consisting of two Judges from the High Court and one from the Sharia Court of Appeal.[18] That arrangement worked reasonably well until it was first struck down in 1961[19] and subsequently scraped having being found to be an infraction of the definition of High Court under the 1979 Constitution.[20]

Between 1977 and 1978, there was serious agitation for the creation of Federal Sharia Court of Appeal to stand side by side with the Federal Court of Appeal. But due to antagonism and resistance, a compromise was reached to provide in the 1979 Constitution[21] for Appeal from the Sharia Court of Appeal to lie to the Federal Court of Appeal instead of the High Court and that at least three (3) of the Justices of Federal Court of Appeal shall be learned in Islamic personal law. The position still remains the same under the 1999 Constitution.[22]

Hence, the Sharia Court of Appeal is a creature of the Constitution. It is a statutory court operating Islamic law, *albeit* limited, in a unified judicial system in Nigeria. Its existence and establishment has thus been recognized in the successive Nigerian Constitutions till date.

ESTABLISHMENT OF SHARIA COURT OF APPEAL

Presently, the Sharia Court of Appeal in Nigeria derives its existence and establishment *vide* the grundnorm, the Constitution. It is mandatory for the government to establish a Sharia Court of Appeal in the Federal Capital Territory (FCT), Abuja. Section 260 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides for it establishment and constitution/composition. The section provides –

> ***"(1) There shall be a Sharia Court of Appeal of the Federal Capital Territory, Abuja.***

18. See High Court (Amendment) Law of Northern Nigeria, No. 28 of 1961.
19. In the case of ***J. S. Olawoyin V. Commissioner of Police (1961) 1 All NLR (Pt.2) 203***.
20. See for instance, ***Ado V. Dije (1984) 5 NCLR 260 at 267***; or ***(1983) SLR 11 CA***.
21. Section 226 of 1979 Constitution.
22. Section 237(2)(b) of the 1999 Constitution.

(2) The Sharia Court of Appeal of the Federal Capital Territory, Abuja shall consist of –
(a) a Grand Kadi of the Sharia Court of Appeal and
(b) such number of Kadis of the Sharia Court of Appeal as may be prescribed by an Act of the National Assembly.

Other than the Federal Capital Territory, any of the States of the federation that desires the establishment of Sharia Court of Appeal is granted the liberty to do so pursuant to section 275 of the Constitution, which has a similar provision as above, that –

"(1) There shall be for any State that requires it, a Sharia Court of Appeal for that State.
(2) The Sharia Court of Appeal of the State shall consist of -
(a) A Grand Kadi of the Sharia Court of Appeal; and
(b) such number of Kadi of the Sharia Court of Appeal as may be prescribed by the House of Assembly of the State.

It is not in any doubt that pursuant to the above constitutional provisions, there is already established in the Federal Capital Territory, Abuja a Sharia Court of Appeal. The official complex of the Sharia Court of Appeal, FCT, Abuja is located at Gudu District, Apo, Federal Capital Territory, Abuja. There is also for the FCT, an Act of the National Assembly on the establishment of the court, its composition, jurisdiction and matters connected thereto, enacted pursuant to the Constitution.

Similarly, States of the federation that requires Sharia Court of Appeal, most especially in the Northern Nigeria where Muslims are predominant, have leveraged on the above quoted constitutional provisions to establish Sharia Court of Appeal. On record, the States that have established the Court are Adamawa, Bauchi, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Nasarawa, Niger, Plateau, Sokoto, Taraba, Yobe and Zamfara. House of Assembly of each of the mentioned States equally promulgated Law on the establishment of the court, its composition, jurisdiction and matters connected thereto, enacted pursuant to the Constitution.

APPOINTMENT OF JUDGES OF SHARIA COURT OF APPEAL

Being a specialized court with some peculiarities that are not obtainable in the other conventional superior courts in the country, the qualifications that must be possessed by persons to be appointed as Judges (which in Arabic means "Kadi"[23]) of the court must equally be different from those required of their counterparts in other courts. Sections 261(3) and 276(3) of the Constitution are similar provisions on qualifications a person must possess before being appointed as Kadi, thusly –

> ***"(3) A person shall not be qualified to hold office as Grand Kadi or Kadi of the Sharia Court of Appeal of the FCT/a State unless –***
> ***(a) he is a legal practitioner in Nigeria and has been so qualified for a period of not less than ten years and has obtained a recognized qualification in Islamic law from an institution acceptable to the National Judicial Council; or***
> ***(b) he has attended and has obtained a recognized qualification in Islamic law from an institution approved by the National Judicial Council and has held the qualification for a period of not less than ten years; and***
> ***(i) he either has considerable experience in the practice of Islamic law, or***
> ***(ii) he is a distinguished scholar of Islamic law.***

Also embedded in the above quoted constitutional provision are the qualifications of a *Sharee'ah* Judge as contained in the corporeal Islamic law, which among others include malehood, intellect and maturity, knowledge of *Sharee'ah*, freeborn (not being a slave), Muslim, probity and integrity, and

23. The fact of the Judges of the Sharia Court of Appeal being called 'Kadis' does not and should not derogate anything in their status/rank from their counterparts in the other coordinate courts.

freedom from sight, hearing and speaking disabilities.[24] Per Okunola JCA in ***Hussain V. Bagade***[25] stated the position thusly –

> *"It can be seen that by its nature, Islamic law abhors a Judge not learned in its proceedings toiling with the sacred law. This is why it is mandatory under the Islamic legal system that only a man well versed in the science of Islamic Jurisprudence should be made a Judge…. From the foregoing, it is clear that if a person or Judge is ignorant of Islamic law, his decision on Islamic law is a nullity."*

JURISDICTION OF SHARIA COURT OF APPEAL

Black's Law Dictionary defines jurisdiction as a court's power to decide a case or issue a decree. Thus, jurisdiction is the power and authority of a court to hear and decide matters placed before it and to issue orders. Jurisdiction could also mean the court in which a particular matter can be brought. A Judge has a duty to expound the jurisdiction of a court but it is not part of a Judge's duties to expand it.[26]

Jurisdiction is very foundational and fundamental to adjudication as it is the life wire, blood or spinal cord of any action in court, and any decision handed down by a court without jurisdiction is incompetent and will be tantamount to an exercise in futility, no matter how well conducted. For that reason, it could be raised at any stage of the proceedings or before any court, including for the first time at the Supreme Court.[27] It is pertinent to note that

24. Prof. AbdulQadir Zubair: Introduction to Islamic Constitutional and Administrative Law (2018) Da'wah Foresight Services, Kaduna, pgs. 296 – 302. Also, Adamu Abubakar Esq.: Islamic Law: The Practice and Procedure in Nigerian Courts (2008) Espee Printing & Advertising, Kaduna, Pg. 20. We also read in the procedural treatise: ***Tuhfatul Hukkam*** that – "A person (to be made a Qaadi) must be male, freeborn and free from sight, hearing and speaking disabilities".

وأن يكون ذكرا حرا سلّم ** من فقد رؤية سمع وكلّم

25. CA/K/798/89 (unreported).
26. See ***African Newspapers of Nigeria V. FRN (1985) 2 NWLR (Pt. 6) 132***.
27. See ***Oloriode V. Oyebi (1984) 1 SCNJ 390***; ***University of Agriculture, Makurdi V. Jack (2000) 11 NWLR (Pt. 658) 662***.

jurisdiction and competency of a court are inter-related. So, when a court lacks jurisdiction, it equally lacks competence.

Generally, the *locus classicus* case of ***Madukolu Nkemdilim (1962) 2 SCNR 342*** stated the basic features of or conditions precedent to jurisdiction, *viz* –

i. when the court is properly constituted as regards members and qualifications of members, and no member is disqualified for one reason or the other;
ii. when the subject matter is within its jurisdiction, and no feature prevents the court from exercising its jurisdiction; and
iii. when the case comes before the court initiated by due process of law and upon fulfillment of any condition precedent.

In Nigeria, a court has jurisdiction over matters only to the extent granted to it by the Constitution and/or legislation. The jurisdiction of the Sharia Court of Appeal is donated by both the Constitution and the Sharia Court of Appeal Act/Laws.[28]

Basically, the adjudicatory jurisdiction of the Sharia Court of Appeal in Nigeria is limited to issues relating to Islamic personal law, namely – marriage, divorce, inheritance/succession, endowment (*waqf*), gift (*hibbah*), Will (*wasiyyah*), custody, guardianship and maintenance of children (*hadhaanah*, *wakaalah* & *nafaqah*).[29] On this, the Constitution, in sections 262(1)&(2) for FCT and 277(1)&(2) for the States, provides –

> ***"(1) The Sharia Court 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 this section.***

28. Sections 262 & 277 of the 1999 Constitution.
29. Adamu Abubakar Esq.: Islamic Law: The Practice and Procedure in Nigerian Courts, pg. 32. Also the case of ***..... V. ..... (2002) 1 NWLR (Pt. 748) 453***.

(2) For the purposes of subsection (1) of this section, the Sharia Court of Appeal shall be competent to decide –
(a) any question of Islamic personal law regarding a marriage concluded in accordance with that Law, including a question relating to the validity or dissolution of such a marriage or a question that depends on such a marriage and relating to family relationship or the guardianship of an infant;
(b) where all the parties to the proceedings are Muslims, any question of Islamic personal Law regarding a marriage, including the validity or dissolution of that marriage, or regarding family relationship, a founding or the guarding of an infant;
(c) any question of Islamic personal Law regarding a wakf, gift, will or succession where the endower, donor, testator or deceased person is a Muslim;
(d) any question of Islamic personal Law regarding an infant, prodigal or person of unsound mind who is a Muslim or the maintenance or the guardianship of a Muslim who is physically or mentally infirm; or
(e) 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.

What is clear from the above provision is that the jurisdiction of the court is limited to civil proceedings; thus, the court has no jurisdiction over any criminal proceedings. Even, the civil jurisdiction conferred on the court is also not at large. It is with respect only to matters involving Islamic personal law,

some of which were inexhastively enumerated in the said provision.[30] It is therefore discernible that there could be three aspects of jurisdictions for the Sharia Court of Appeal, namely –

i. jurisdiction confer on it by Act/legislation of the National Assembly in case of the FCT or by Law/legislation of the House of Assembly in case of the State;
ii. Appellate jurisdiction over decision of court of first instance in the enumerated matters, such as marriage, divorce, inheritance/succession, endowment, gift, Will, custody, guardianship and maintenance of children, all governed or regulated by Islamic personal law; and
iii. supervisory jurisdiction.

Jurisdiction conferred by law other than the Constitution

The Constitution by the above quoted provision empowers the National or State Assembly, as the case may be, to confer additional jurisdiction on the Sharia Court of Appeal. It is pursuant to this power that the respective Sharia Court of Appeal Laws have been enacted by the States that desired the establishment of the court. The National Assembly has an Act promulgated for the Sharia Court of Appeal of the FCT in the same regard.

This same power to add to the jurisdiction of the Sharia Court of Appeal has however been subject of diverse interpretations. While some posit that the constitutional power could be leveraged on to expand the jurisdiction of the Sharia Court of Appeal, at least to cover the application of Islamic law in civil proceedings that relate to the private lives of Muslims in its entirety; some others are of the strong view (backed by case law) that the jurisdiction that could be donated by the said national Act or State law cannot go outside the subjects mentioned by the Constitution, under the principle of '*ejusdem generis*' interpretation of the word: "other" used in section 277 of the Constitution.[31]

30. Other issues of Islamic personal law not enumerated by the Constitution include, *Shuf'a* (prescription), *Rahn* (pawn), *Musharaka* (partnership) etc. See ***Haruna V. Suleiman (supra)***; ***Faransi V. Noma (2007) 10 NWLR (Pt. 704) 537***.

31. See Haruna V. Suleiman (2014) 2 SQLR (Pt. IV) 521 at 537 – 538, para F.

It is also argued that the rule of interpretation of statute is that where general provision as in subsection (1) thereof precedes specific provision, as in subsection (2)(a) – (e) thereof, the specific takes precedent.

Appellate Jurisdiction

Other than the additional jurisdiction(s) as may be conferred on it, the Sharia Court of Appeal shall be competent to entertain appeal on –

a. any question of marriage conducted in accordance with Islamic law, including the determination of its validity or dissolution or issues relating to such marriage, family relationship or guardianship of an infant of such marriage;
b. similarly, issues relating marriage including its validity or dissolution, family relationship, foundling or guardianship, here where all the parties are Muslim;
c. issues regarding *wakf*, gift, will or succession where the endowed, donor, testator or deceased person is a Muslim;
d. any question of infant prodigal or person of unsound mind who is a Muslim, including maintenance or guardianship of a Muslim who is physically or mentally infirm; or
e. cases where all the parties to the proceedings being Muslims have elected that the court of first instance should determine the case in accordance with Islamic personal law.

By the present state of the law, the Sharia Court of Appeal cannot entertain appeal arising from decision of the trial court on claims other than personal, family and/or domestic law matters. The court cannot exercise appellate jurisdiction over simple torts, declaration of title, commercial or contract disputes etc. Thus, where the claim in the trial court was simply or purely a matter of declaration of title to land or sale of landed property, even if the parties are Muslims, the Sharia Court of Appeal will have no jurisdiction to entertain any appeal arising therefrom, except the matter involves issues of Islamic personal law such as waqf, gift, will or succession.

Similarly, the Sharia Court of Appeal will have no business exercising jurisdiction over claim involving ownership *simplicita*[32], unless the claim is linked with inheritance, *waqf*, will etc. It also does not include enforcement of contract, even if it is Islamic contract of sale (*Al-Baeu*).

Supervisory Jurisdiction

Until recently with the establishment of Sharia Court of first instance, in the Northern part of Nigeria were Sharia Court of Appeal is established, the trial court from where appeal lies to Sharia Court of Appeal is in most States statutorily under the general supervision of the Chief Judge of the State. But with the constitutional provision in sections 261(1) and 277(1) of the Constitution, the Sharia Court of Appeal is vested with the supervisory jurisdiction over the court of first instance entertaining Islamic personal law matters. This therefore means the Sharia Court of Appeal has limited supervisory powers on Area and Sharia Courts with respect to Islamic personal law matters which it has competence to decide under subsection (2) of those sections.

EFFECTIVE DELIVERY OF JUSTICE BY SCA

Cognizance being had to the fact that the Sharia Court of Appeal is a specialized court targeted at providing justice to certain larger component of the nation, called Nigeria – i.e the Muslims, who ought to be distinctly legally and judicially regulated; and in the face of the limitations clogging the court's wheel, it could be safely said that the Sharia Court of Appeal, either in the FCT or States where it is established, has not fared badly. In fact, the court has commendably been exercising its obligations and duties to the admiration of all the stakeholders in the justice delivery system.

It is instructive to note that effective delivery of justice in the court begins with putting the right person in the driver's seat of justice delivery. In other words, there must the appointment of persons who are qualified and with the afore-stated constitutional and Islamic law qualifications. It is therefore

32. ***Ado V. Dije (supra)***.

pleasant to note that the crop of the Kadis (the Judges) manning the Sharia Courts of Appeal where they exist, are persons eminently qualified and with the appropriate sobriety, integrity and the specialized technical knowhow required for the job. They not only perform creditably in their specialized calling but also compete favourably with their brother Judges of the English and other type of courts, with the statistic also showing a near hundred percent of the Kadis being qualified legal practitioners called to the bar, besides their being well grounded in *Sharee'ah* knowledge.

Importantly too, an appeal is a request to a higher court to look at the proceedings and judgment of the lower court for purposes of determining whether the lower court rightly decided the case. That basically is effectively being carried out by the Sharia Court of Appeal expeditiously and further appeal in respect thereof lies to the Court of Appeal and finally to the Supreme Court. The people who have business doing in the court (SCA) find same not only accessible but also affordable as the filing fees and other sundry being paid are still far below what the other conventional courts charge. The procedure being adopted by the court is so lucid and simple with doing not only substantial but total justice as its target. Under the corporeal body of Islamic law, technicality has no place at all in this kind of court.[33]

Another area of effective delivery of justice by the Sharia Court of Appeal is the several non-adjudicatory roles been played by the Court in some States, such as involvement in physical distribution of estate (other than estate disputes), granting of Islamic probate/authority, solemnization and registration of marriage and granting of Islamic Marriage Certificate, etc. The distribution of estate of deceased Muslims in accordance with the provisions of *Sharee'ah*, is a religious duty over which no court, body, establishment, association or individual has the exclusive right or monopoly. An individual chosen by the heir(s), so far has he has the knowledge, is competent to carry out the distribution. In ***Jiddun V. Abuna & Anr. (2000) 14 NWLR (Pt. 686) 209 at 220*** the court held thusly –

33. See ***Wudil V. Wudil (2014) 2 SQLR (Pt. IV) 595***.

> *"Where a Muslim dies, his heirs are permitted by law to appoint a person learned in Islamic law to share his estate among them according to such law, and if subsequently the matter is taken before a court of law, that court will enforce the sharing…."*

Under Islamic law, the conditions precedent to an individual or body having the *vires* to carry out distribution of estate of a deceased Muslim are: (i) ascertainment that the deceased was a Muslim, (ii) the distributor having the requisite technical knowledge (*ilmul fara'eed* or *meeraath*) and (iii) submission by the heirs of the estate for distribution. On the necessity of embarking on the distribution by the court, it was held in ***Karimu Olomu V. Humuani***, per Uthman JCA (as he then was) that –

> *"The moment a Judge, in Islamic law, finds out an estate in dispute is a subject of inheritance, it is mandatory upon him, even at the appeal stage, to divide the said estate."*[34]

Being an appellate court, in its adjudicatory power, the Sharia Court of Appeal by the present state of the law has no original jurisdiction on **dispute** over estate of a deceased Muslim, which must first be determined by the court of first instance, and the appeal therefrom will then lie to the Sharia Court of Appeal.

Justice service delivery is also being rendered by the Sharia Court of Appeal through the qualitative, well-researched and robust judgments been churned out in the court which are not only capable of standing the test of time and any likely appeal thereon, but also reportable and referable in the various law reporting channels, journals, academic reviews, etc. the judgments also serves as persuasive precedent/*stare decisis* for the lower courts, thereby enriching the Nigeria jurisprudence. As a results, many of our brilliant and landmark judgments adorn the ever-increasing print and media law reports with even some emerging specialized law reports on Islamic law, such as the ***Sharia***

34. See also ***Gudito V. Musa (2016) 4 SQLR (Pt. IV) 639 at 656***.

Quarterly Law Report (SQLR) and of course, the rebranded and re-packaged ***Kwara Sharia Court of Appeal Law Report (KSCALR)***[35].

THE NEED FOR REFORMS

Instructively, it has been seen that a large component part of the Nigeria has Muslims being the predominant. Hence, that accounts for why the Sharia Court of Appeal is desired and established in those States, which constitute more than half of the States in Nigeria and FCT (i.e 18 States plus the FCT). Also note worthy is the fact that most of the said States, especially in the North, are well populated and Muslims are the majority statistically. These Muslims desires to be regulated and have their disputes resolved in accordance with the divine law of Allaah, the *Sharee'ah* (Islamic law) which they profess by choice. Also as earlier espoused, the dictate of their chosen religion does not permit having a part of their affairs determined/regulated by one law and another part by different law.

There is no doubt that there has been repeated calls for the review of the grundnorm (Constitutional amendment) with respect to the application of the *Sharee'ah* in the Nigerian Courts, especially in the specialized Courts such as the Area/Sharia Courts and the Sharia Court of Appeal where appeal from such lower court lies. The point to be emphasized here is that as earlier stated, Islamic law is certain, even more than the received English law that adorn our local legislations, and even the customary law. In the same vain, *Sharee'ah* has been shown to be applicable **ONLY** to Muslims or any other parties that have on their own volition elected to have their cases determined in accordance with Islamic law.

It is thus in the above light that the call is again being canvassed now to allow the total application of Islamic law (*Sharee'ah*) on the said category of people, i.e the Muslims only. We could begin with the total civil jurisdiction being conferred and assuredly graduate to the criminal jurisdiction in no distant later. All the perceived and unsubstantiated concerns and fear about amputation

35. The Kwara Sharia Court of Appeal Law Report (KSCALR) re-packages and rebrands the age-long Shariah Court of Appeal, Ilorin, Annual Report.

or stringent punishments under Islamic criminal law are all not only with a near-total processes that make their application extremely the very last resort, but also with deterrent mechanisms that are effective and even not up to the cruelty[36] in the received and most beloved legal system – the received English laws.

Therefore, non-Muslims in Nigeria should not antagonize or object to the giving of full *Sharee'ah* to the Muslims or whosoever wishes, as it will not be applicable on them, as being a Muslim is a matter of volition.[37]

As to whether the Sharia Court of Appeal can have original jurisdiction in some specific matters, the argument in support thereof is more profound, as it is not novel to appellate courts to also have original jurisdiction where it is expedient to do so. Examples include, the Customary Court of Appeal given original jurisdiction in chieftaincy/traditional stool matters[38] in some places; the Court of Appeal having original jurisdiction in presidential election tribunal; and the Supreme Court being granted the original jurisdiction in matters between the Federal Government and any of the States or between the States *inter se*. Even the High Court of the State that by the Constitution ordinarily has original jurisdiction, equally by legislation has appellate jurisdiction over decisions of Magistrate, District, Special, Area/Sharia and Customary Courts in the State.

Leveraging on the constitutional window of conferring additional jurisdiction, some State Laws tried to expand the jurisdiction of the Sharia Court of Appeal to encompass some other matters of civil Islamic law, and even some Islamic criminal appeal. This legislative activism has however been met with

36. For example death by hanging or electrocution or by firing squad.

37. Qur'aan, chapter 2:256 – "There is no compulsion in the religion (Islam)……" .See also note ….. op.cit

38. See an Act of the National Assembly, titled: Customary Court of Appeal, Federal Capital Territory, Abuja (Additional Jurisdiction) Act, 2009. Some antagonists are criticizing the Act as being in conflict with section 267 of the Constitution which only established the Customary Court of Appeal, FCT, Abuja as an appellate court.

stiff rejection by the appellate courts through case law, wherein such provisions have been declared as being inconsistent with the Constitution.[39]

One would have expected the higher courts to find accommodative interpretation for the constitutionally allowed additional jurisdiction, at least pending the realization of the much sought for constitutional amendment. The National Assembly effectively utilized similar provision of the Constitution to confer additional and original jurisdiction on the Customary Court of Appeal, FCT, Abuja. What is good for the goose should be good for the gander.

As reported earlier on the caliber of Kadis being appointed to the Sharia Court of Appeal bench, they are not only competent and qualified but also commendable and can fit into both side of the divide – i.e English law and Islamic law. Be that as it may, the appointing authority is still urged to ensure that subsequent appointments are in tune with the standard set, so as not to give room for any non-learned person in Islamic law or those who possess mere paper/academic qualification without being well grounded. Per Okunola's quotation *supra* is again instructive here.

I also wish to chip in here that in contravention of the Constitution, there is presently dearth of Justices with Islamic law qualifications at both the Court of Appeal and the Supreme Court. Something serious and urgent needs to be done in that regard. There are available more than enough capable hands that can be elevated from the bench of the Sharia Court of Appeal up the ladder. Again and at the risk of being repetitive, Per Okunola's *dictum supra*, re-echoes –

> *"It can be seen that by its nature, Islamic law abhors a Judge not learned in its proceedings toiling with the sacred law. This is why it is mandatory under the Islamic legal system that only a man well versed in the science of Islamic Jurisprudence should be made a Judge…. From the foregoing, it is clear that*

39. Such cases struck down for inconsistency with S.277 of the Constitution include – ***Kanawa V. Maikaset (2007) 10 NWLR (Pt. 1042) 539*** on S. 17 of Sokoto State Sharia Courts Law; ***Haruna V. Suleiman & A. G. Zamfara (2014) 2 SQLR (Pt. IV) 540*** on Ss. 42 & 43 of Zamfara State Sharia Court (Establishment) Law, No. 5 of 1999.

if a person or Judge is ignorant of Islamic law, his decision on Islamic law is a nullity."

In some States, the control and supervisory role over the courts below in matters of Islamic law is still a subject of conflict between the High Court/Chief Judge and the Sharia Court of Appeal. The latter court has practically no iota of control to exercise on Area/Sharia Judges from whom their appeals lie to it. The spirit and letters of section 277(1) of the Constitution is recommended for strict compliance in that regard.

CONCLUSION

The above brief exposition of the topic is by no means exhaustive on the principles in respect thereof. It is however just a scratch so far as the constraint of time and space permits me. It is hoped that the observations and recommendations contained therein, if implemented, will definitely enhance the delivery of justice by the Sharia Court of appeal.

Once again, I am grateful for this rare opportunity to share my thoughts and experience at this august gathering. I thank your lordships for listening. God bless.