**JURISDICTIONAL ISSUES IN THE APPLICATION OF SHARIA IN NIGERIA**

**BEING A PAPER PRESENTED AT THE INDUCTION COURSE FOR NEWLY APPOINTED JUDICIAL OFFICERS OF THE SUPERIOR COURTS OF RECORD, HELD AT NJI, ABUJA, BETWEEN 6TH AND 10TH MAY, 2024**

**BY**

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**INTRODUCTION**

I must first of all thank the Almighty Allah for sparing my life and giving me the strength and good health to stand before you to present this paper. I will also like to thank and register my appreciation to the Administrator of the National Judicial Institute, Hon. Justice Salisu Garba Abdullahi, for finding me worthy by nominating me as one of the resource persons to this Induction Course. The entire members of staff of the NJI who serve as the engine room in facilitating and ensuring the successful conduct of this programme are also highly appreciated. May I also register my profound gratitude to the Chairman of the session and his entire team. To our newly appointed judges, My Lord, I would say welcome on board. I pray that Allah will continue to guide, protect and give you the wisdom throughout your judicial career.

As this paper has to do with judicial issues in the application of Sharia in Nigeria, I would like to restrict myself on issues of jurisdiction as it relates to courts that exercise jurisdiction in Islamic Law with more emphases on Superior Courts of record in Nigeria.

**DEFINITION OF KEY TERMS:**

Based on the topic of discussion, two key terms are identified, namely: Sharia and Jurisdiction.

1. ***Sharia***

Literally, Sharia (Islamic law) is an Arabic term derived from the classical Arabic word “Shar”, that is, a path to be followed. Technically, it is a composition of divine rules and regulations whose objectives is to guide both the mundane and spiritual lives of all Muslims the world over regardless of race, colour, cultural background and geographical boundaries or any other considerations. It contains adequate injunctions to cover both the civil and criminal matters arising from the effect of socio-political and economic transactions of all Muslims and even non-Muslims alike. It absorbs all practices which do not run counter to its basic principles.

According to some scholars, the term Sharia is usually defined as the body of those institutions which Allah has ordained to guide the individuals in his relationship to God, his fellow Muslims, his fellow men and the rest of the Universe. While others are of the view that Sharia is an act of rules which regulates the conduct and affairs of people for settling all differences and avoiding all disputes.

Having briefly defined Sharia, it is imperative to specify or identity its sources. The sources of Sharia are basically two i.e., Primary and Secondary Sources. The primary source comprises of the Quran, which are the words and commandments of Allah and the Sunnah of the Holy Prophet (s.a.w.) which comprises of his words deeds and tacit approvals. For the Secondary Source, we have Ijma (consensus opinion of the Muslim Jurists); Qiyas (analogical deductions from the primary and secondary sources); Ijtihad (independent legal reasoning or efforts of a Muslim Jurist; and Urf (custom) and Adat (tradition). Furthermore, there are subsidiary sources such as Maslaha (legislation made in the public interest); and Istihsan (legislation made in preference to the earlier ones in force).

Worthy of note, Sharia is a complete code of conduct which is predicated on the total submission to the will of Allah as a in the Holy Quran and the Sunnah of the Holy Prophet Muhammed (s.a.w.). Its scope covers Ibadat (relationship between man and his Creator) and Mu’amalat (relationship between man and other creations); it is a comprehensive, organic and all embracing.

1. ***Jurisdiction***

Jurisdiction in a simple team means a court’s power to decide a case or issue decree or a geographical area within which particular or judicial authority may be exercised. According to the Nigerian Law Dictionary New Edition by Suleiman Ismaila Nchi (page 336), jurisdiction is the power of court to entertain an action or a dispute and decide it. Late Hon. Justice Mohammed Bello CJN of blessed memory described jurisdiction in the case of *Chief Otuebor Utih Vs Jacob U. Omoyirwe (1991) 2 LRCN 221 at 247* as “The Blood that gives life to the survival of an action in a court of law and without jurisdiction the action will be like an animal that has been drained of its blood, it will cease to have life and any attempt to resuscitate it without infusing blood into it would be an abortive exercise”. Tobi JSC in *Okoro Vs Eguoh (2006) All FWLR PT 332, 1569 at 1588* cautioned that although Jurisdiction is a word of large purport and significance in the judicial process, it is not a subject of speculation or gossip. It is a matter of strict and hard law donated by the Constitution and Statutes.

The Court of Appeal also in a very explicit terms held in the case of *GTB vs Toyed (Nig.) Ltd and Anor (2016) LPELR – 4181 CA*that “The law is well settled and it no longer admits of any argument that jurisdiction is the very basis and the life wire of every matter and on which any court tries or hears a case. It is, metaphorically speaking, the life blood of all trials, whether it be at the court of trial or an appeal, without which all such trials and hearings are a nullify notwithstanding how well or meticulous such a trial or proceedings had been conducted or how sound or profound the resultant judgment, it is simply a nullity.”

**APPLICATION OF SHARIA WITHIN THE INFERIOR AND SUPERIOR COURTS**

In Northern Nigeria where Muslims are largely concentrated and hence Islamic Law becomes more practicable, courts were established. In the first place, Area Courts were established by the various area court laws in most states of the North. In my State, Adamawa, these courts were hitherto referred to as Natives/Allkalis Court which were later renamed and converted to Area Courts which administer Islamic Law. The Area Court edict of 1968 was the one enforced in the defunct Gongola up to when Adamawa State was created in 1991. Subsequent amendments were made as regards the jurisdiction and compositions of the court. Some of these courts were presidential with members while some area courts have sole judges. By Section 4 (2) of the Area Court Edict 1968 all questions of Muslim personal law shall be heard and determine by any member of an Area Court learned in Muslim Law sitting alone. By virtue of section 17 of the said edict four grades of Area Courts existed i.e., Upper Area Court and Area Courts Grades 1, 2 and 3. Contrary to what is obtainable now by section 28(1) of the Area Court Edict 1968, No legal practitioner will appear to act or assist any party before an Area Court.

With the modifications and amendments of the Area Courts Edict, changes were made both in terms of jurisdiction and composition of that courts. What is obtained now is the Area Court Edict 1998 unlike the one in 1968, the presence one under section 4 created only 2 grades of Area Courts i.e. Upper Area Court and Area Court. By this edict, Upper Area Court are now manned by Chief Magistrate or Legal Practitioner. It was not what was obtainable before. In terms of jurisdiction, by part 1 and 2 of the first schedule in 1998 edict Upper Area Court have unlimited jurisdiction in terms of civil causes and action while in criminal cases homicide is the only exceptions in their jurisdiction. The Jurisdiction of the Area Court in terms of inheritance as reflected in the first schedule of that Edict (1988) is limited to the value of property of not more than N20,000.00. This is a serious blow on the application of Islamic law. Appeals from Area Court goes to Upper Area Court while that of Upper Area Court goes to the Shaira Court of Appeal as regards to Islamic Personal Law, and to the High Court in other matters. Some of the Northern States like Bauchi, Kano, Zamfara etc. Sharia Courts of various grade were created and vested with both criminal and civil jurisdiction on Islamic matters.

The Apex Court at the state level that exercises jurisdiction on Islamic matters is the Sharia Court of Appeal of the State which is the creature of the constitution of the Federal Republic of Nigeria and therefore, a constitutional report. Section 275 of the constitution of the Federal Republic of Nigeria 1999 (As amended) created the Sharia Court of Appeal for any State that requires it. Section 277 of the constitution are outlined the jurisdiction of the Sharia Court of Appeal which exercise both appellate and supervisory jurisdiction in Civil Proceedings involving Islamic Personal Law. The limitations of the jurisdiction to only Islamic Personal Law is bringing a lot of hitches in the application of Islamic Law. There are certain matters that Area Courts adjudicates on pertaining Islamic matters even though the lower court has the jurisdiction, when it comes to the Sharia Court of Appeal its hands becomes tied because of the provision of section 277 of the constitution which restrict the jurisdiction of the Shaira Court of Appeal to only Islamic Personal Law. Recently in our jurisdiction, we had a similar situation in a case of leadership of a Mosque which came up on appeal before us from one of the Upper Area Court which apparently is an Islamic Issue but considering our jurisdiction as spelled out in the constitution which restrict us to only Islamic Personal Law, we have no alternative than to decline jurisdiction as it is not within the contemplation of section 277 of the constitution. This is only a serious blow to the court, but subjecting the parties to an undefined status by referring them to High Court. The Court of Appeal always in many matters has cautioned the entertainment of matters without the jurisdiction.

In the case of*Mallam Audu Kano Vs Sarkin Oka (2006) 3 SLR Part 3 Page 184 At 186 R1***.** The Court of Appeal restated that “The questioned of the jurisdiction is fundamental as any proceeding conducted without jurisdiction is a nullity”. Most of the cases in some of Northern Jurisdiction where Sharia Court were created and conferred with jurisdiction in criminal and civil matters not pertaining Islamic Personal Law cannot see the light of the day on appeal at the Sharia Court of Appeal, the Court of Appeal and Supreme Court. Where the Sharia Court of Appeal goes outside section 277 of the 1999 constitution (as amended) the Court of Appeal is there to check.

The Court of Appeal is another creature of the constitution that exercises jurisdiction to the exclusions of any other court of law to hear appeals from the Sharia Court of Appeal as enshrined under section 240 of the constitution. The disheartening thing is that section 247 (1) (a) of the constitution provided that for the purpose of excising any jurisdictions conferred upon it by this constitution, the Court of Appeal shall be dully constituted to hear appeals from Sharia Court of Appeal, if it consist of not less than 3 justices of the court of Appeal learned in Islamic Personal Law, contrary to that, section 238 of the 1999 constitution has not placed clears special qualifications in respect of Islamic Personal Law as regards appointment of Justices of the Court of Appeal which at the end, matters pertaining Islamic Laws falls in the hands of those that are not learned in Islamic Law at all which is a serious sect back to the application of Islamic Law. From the recent compositions of the panels of justices hearing appeals from the Sharia Court of Appeal are mostly adjudicated by justice who are not learned in Islamic Law. The recent appointment did not still cure the gap created, hence a set back to the application of Islamic Law.

The Apex Court of the Land i.e., Supreme Court which is a creature of section 230 of the constitutions of the Federal Republic of Nigeria (as amended). The Supreme Court as well has not place any requirement for qualifications of persons learned in Islamic Law before appointment as well as composition. This is a court that gives final decision on all matters not only on Islamic Law but other matters as well. The two courts that is the court of Appeal and Supreme Courts are the developers of the Nigeria Legal System and creation of this serious lacuna as regards appointment of persons learned in Islamic Law is not only creating a set back to the application of Islamic Law but as well stargazing the development of our law.

**JURISDICTIONAL ISSUES**

Although several attempts were made to amend the constitution in other to take care of the issues of jurisdiction as it affects the application of Islamic law but up till now, it has not seen the light of the day. Unless and until the following issues are considered, the rights enshrined under section 38 (1) of the Constitution of the Federal Republic of Nigeria 1999 as (amended) for persons or community affected will continue to suffer such deprivations endlessly. Thus, the following are issues of concerned:

1. Sharia Court of Appeal as it is presently constituted exercises the jurisdiction in respect of matters relating to Islamic Personal Law which shows that in cases decided by the Area Court under Islamic Law other than “Personal law”, the appeals lie to the High Courts in its appellant jurisdiction. It is very clear that absence of lists of matters with wider jurisdiction or civil matters concerning Islamic law against Islamic Personal Law is seriously serving as a stumbling block in the application of Islamic Law.
2. All matters pertaining to Islamic Law outside Islamic Personal Law decided by Upper Area Court goes to the High Court as indicated above in which case, we recently declined jurisdiction despite an issue of Islamic law. The High Court is established to hear and determined matters of common law principles but to say judges not qualified in Islamic law are been authorized by the constitution to sit for an appeal in cases involving Islamic Law is a mockery of the provision of section 36 (1) as well as section 38 of the constitution. Therefore, there is a need to extend the jurisdiction of the Sharia Court of Appeal to cover all aspects of Islamic Law. It is pertinent to note that amendment aimed at enlarging the jurisdiction of the Shaira Court of Appeal will be futile provided it stops at removing the word personal without deleting sections 262 (2) and 277 (2) of the constitution.
3. As regards appointment of Justices of the Supreme Court and Court of Appeal which deals with section 288 of the constitution should also be amended. They used the word “Personal is the said sections also restricts the qualification of persons appointed into that office. The effect is that person qualified in Islamic Personal Law will be appointed as opposed to those qualified in general Islamic Law. The appointment should be based on Islamic Law.

**CONCLUSION**

I would like to start my conclusion by the dictum of his Lordship **Hon**. **Justice Muntaka Commassie**JCA (as he then was) of blessed memory when he stated in the case of *Maida Vs Modu (2002) 2 NWLR Part 659 at Page 99*

*“It seems to me that new 1999 constitution of the Federal Republic of Nigeria does not in any way improve the jurisdiction of the Sharia Courts in this Country. It does not enhance the jurisdiction of those courts. This in my view, with all sense of responsible, is unfair. In most cases of these appeal inclusive, one discover to be govern by Islamic Law in Islamic Law Courts and lastly that the subject matters and issues involved called for intensive application of Islamic Law and procedure which are not available. Moreover, the law to be applied in the High Court are quite alien to the parties and the Sharia Court. I do not think that in such circumstances justice could be said to have done to the parties and subject matter”.*

In view of the above discussions, the following recommendations are hereby made:

1. The word “Personal” in sections 233, 238 and 240 of the Constitution should be deleted. This will enable the court of Appeal and Supreme Court entertain any appeal from the Shaira Court of Appeal in questions involving Islamic Law.
2. As to the sitting of the High Court on any appeal on Islamic matters, there is a need for the various High Court laws to provide for sitting with assessors on appeals who will assist the Court in determining Islamic matters as it used to be in those days. This should not only reflect in the High Court Laws, but the assessors should be recognized and be provided in the constitution. This will curtail the situation of judges not learned in Islamic law sitting on matters pertaining Islamic Law.

Finally, I called upon all stake holders in the Justice sector to continue with the struggle on the constitutional amendment so as to have a sound justice delivery. The National Judicial Institute as the training institution for Judiciary Officers and other Judiciary Staffs we immensely continued to play his role in this regard. I therefore thank each and every one. My colleagues who have now joined us, I pray Allah will continue to guide us towards this journey in persuade of justice for all.