SHARIA COURT OF APPEAL

ILORIN, KWARA STATE
NIGERIA

2010 ANNUAL REPORT

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34. Ibrahim Raji Vs. Rafatu Temimu

ESTATE DISTRIBUTION

1. Late Mr. Durosinlorun J. O.
2. Late Alhaji Adisa Bello
3. Late Alhaji Mohammed Sambo
4. Late Ishola Alaya
5. Late Alhaji Amusa AbdulSalam Olaiya Offa

Motion/Appeals Brought Forward from year 2009

S/NO.	LIST OF MOTIONS/APPEALS	DATE FILED
1.	KWS/SCA/CV/AP/IL/10/2007	19/07/2007
2.	KWS/SCA/CV/AP/IL/15/2007	12/11/2007
3.	KWS/SCA/CV/M/IL/13/2008	21/08/2008
4.	KWS/SCA/CV/AP/IL/17/2008	11/11/2008
5.	KWS/SCA/CV/M/IL/15/2009	23/10/2009
6.	KWS/SCA/CV/AP/IL/10/2009	05/11/2009
7.	KWS/SCA/CV/AP/IL/17/2009	06/11/2009
8.	KWS/SCA/CV/AP/LF/06/2009	03/06/2009
9.	KWS/SCA/CV/AP/PG/03/2009	05/11/2009
10.	KWS/SCA/CV/AP/PG/04/2009	05/11/2009
11.	KWS/SCA/CV/AP/IL/01/2009	10/02/2009
12.	KWS/SCA/CV/AP/IL/08/2009	04/06/2006
13.	KWS/SCA/CV/AP/IL/12/2009	07/07/2009
14.	KWS/SCA/CV/AP/IL/13/2009	21/07/2009

TABLE OF MOTIONS/APPEALS FILED IN THE YEAR 2010

S/NO	LIST OF CASES	DATE FILED	TRIAL COURTS

1.	KWS/SCA/CV/M/IL/01/2010	08/0/2010	A/C 1 No 11 Ilorin
2.	KWS/SCA/CV/M/IL/02/2010	15/02/2010	U.A.C. Omu-Aran
3.	KWS/SCA/CV/M/IL/03/2010	01/03/2010	S.C.A Ilorin
4.	KWS/SCA/CV/AP/IL/04/2010	08/03/2010	A/C NO 11
5	KWS/SCA/CV/M/IL/05/2010	09/03/2010	S.C.A Ilorin
6.	KWS/SCA/CV/AP/IL/06/2010	11/03/2010	A/C 1 NO 1 CENTRE, IGBORO ILORIN
7.	KWS/SCA/CV/AP/IL/07/2010	17/03/2010	UAC 1, ILORIN
8.	KWS/SCA/CV/M/IL/08/2010	07/04/2010	U.A.C. NO 1 ILORIN
9.	KWS/SCA/CV/M/IL/09/2010	19/04/2010	S.C.A. ILORIN
10.	KWS/SCA/CV/M/IL/10/2010	12/05/2010	U.A.C1 ILORIN
11.	KWS/SCA/CV/AP/IL/11/2010	28/05/2010	A/CT 1 TSARAGI
12.	KWS/SCA/CV/M/IL/12/2010	28/05/2010	A/CT 1 TSARAGI
13.	KWS/SCA/CV/AP/IL/13/2010	03/06/2010	A/C GD 1 NO 1, CENTRE IGBORO ILORIN
14	KWS/SCA/CV/M/IL/13/2010	07/06/2010	S.C.A ILORIN
15.	KWS/SCA/CV/M/IL/2^{A}/2010	07/06/2010	A/C 1 TSARAGI
16.	KWS/SCA/CV/M/IL/15/2010	12/07/2010	A/C 1 CENTRE

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17.	KWS/SCA/CV/AP/IL/16/2010	22/09/2010	A/C 2 CENTRE IGBORO ILORIN
18.	KWS/SCA/CV/M/IL/17/2010	04/10/2010	A/C 1 NO 3 ILORIN
19.	KWS/SCA/CV/M/IL/18/2010	12/10/2010	A/C 1 NO 3 ILORIN
20.	KWS/SCA/CV/AP/IL/19/2010	21/10/2011	A/C GRANDE 1 NO 2 CENTRE IGBORO, ILORIN
21.	KWS/SCA/CV/AP/IL/20/2010	11/11/2010	U.A.C 111 PAKE ILORIN
22.	KWS/SCA/CV/M/IL/21/2010	26/11/2010	U.A.C 111 PAKE ILORIN
23.	KWS/SCA/CV/AP/IL/22/2010	30/11/2010	A/C 1 NO 3 ADEWOLE ILORIN
24.	KWS/SCA/CV/AP/IL/23/2010	22/12/2010	A/C 1 NO 2, CENTRE IGBORO ILORIN
25.	KWS/SCA/CV/AP/PG/01/2010	14/10/2010	A.G. PATIGI
26.	KWS/SCA/CV/AP/PG/02/2010	14/10/2010	A.G. PATIGI
27.	KWS/SCA/CV/AP/PG/03/2010	14/10/2010	A.G. PATIGI
28.	KWS/SCA/CV/M/LF/01/2010	11/01/2010	A/C 1 SHONGA
29.	KWS/SCA/CV/MILF/02/2010	11/01/2011	A/C 1 TSARAGI

30.	KWS/SCA/CV/M/LF/03/2010	01/03/2010	A/C 1 SHONGA
31.	KWS/SCA/CV/AP/LF/04/2010	22/03/2010	A/C 1 SHONGA
32.	KWS/SCA/CV/AP/LF/05/2010	23/04/2010	A/C 1 LADE
33.	KWS/SCA/CV/AP/LF/06/2010	23/04/2010	A/C 1 TSARAGI
34.	KWS/SCA/CV/AP/LF/07/2010	08/07/2010	A/C 1 TSARAGI
35.	KWS/SCA/CV/AP/LF/08/2010	09/09/2010	A/C 1 TSARAGI
36.	KWS/SCA/CV/AP/LF/09/2010	14/08/2010	A/C 1 TSARAGI
37.	KWS/SCA/CV/AP/LF/04^{A}/2010	30/09/2010	A/C 1 TSARAGI
38.	KWS/SCA/CV/AP/SH/01/2010	10/12/2010	A/C 1 TSARAGI

TABLE OF APPEALS/ MOTIONS DECIDED IN YEAR 2010

S/No.	Case Numbers	Date Filed	Date Decided	Paties	Panel	Judgments / Rulings Deliverd by :
1.	KWS/SCA/CV/M/IL/15/2009	23/10/2009	17-02-2010	Alhaji Issa Alabi Usman Vs. Mallam Mohammed Alabi & Two Others	I.A. HAROON A.K.ABDULLAHI S.O.MUHAMMAD	Hon. Justice A. K. Abdullahi
2.	KWS/SCA/CV/AP/IL/17/2008	11-11-2008	17-02-2010	Hajia BilikisTinuola Sulu Gambari Vs. Alhaji Sa'adu Olaofe & Two Others	I.A. HAROON A. A. IDRIS S.M. ABDUL BAKI	Hon. Justice A. A. Idris
3.	KWS/SCA/CV/AP/IL/13/2008	21-08-2008	17-02-2010	Amudalat Akanke Vs. Jamiu Alao	I.A. HAROON A.A. IDRIS S.M. ABDUL BAKI	Hon. Justice I. A. Haroon

4.	KWS/SCA/CV/M/LF/01/2010	11-01-2010	23-022010	Ndafogi Abubakar Vs. Fatimat Ndafogi Abubakar	I.A.HAROON S.O. MUHAMMAD A.A. IDRIS	Hon. Justice A. A. Idris
5.	KWS/SCA/CV/AP/LF/06/2009	06-06-2009	23-02-2010	Salamatu Buke Vs. Taoheed Musa	I.A. HAROO S.O. MUHAMMAD A.A. IDRIS	Hon. Justice I. A. Haroon
6.	KWS/SCA/CV/M/IL/01/2010	08- 01-2010	04-03-2010	Jimoh Abanise Vs. Falilat Ajadi	A.K. IMAM FULANI A.K.ABDULLAHI S.M. ABDUL BAKI	Hon. Justice S. M. Abdul Baki
7.	KWS/SCA/CV/M/IL/07/2010	17-03-2010	31-032010	Alhaji Issa Alabi Vs. Mallam Mohammed Alabi & 2 Others	I.A. HAROO S.O. MUHAMMAD A.A. IDRIS	Hon. Justice I. A. Haroon
8.	KWS/SCA/CV/M/LF/02/2010	11-01-2010	07-042010	Ndache Kolo Vs.	I.A. HAROO S.O. MUHAMMA	Hon. Justice I. A. Haroon

				Aminat Ndache Kolo	D A.A. IDRIR	
9.	KWS/SCA/CV/AP/LF/03/2010	01-03-2010	07-04-2010	Ndafogi Abubakar Vs Fatima NdafogiAbubakar	I.A. HAROO S.O. MUHAMMAD A.A. IDRIR	Hon. Justice S. O. Muhammad
10.	KWS/SCA/CV/M/IL/05/2010	09-03-2010	14-04-2010	Jamiu Alao Vs. Amudalat Akanke	I.A. HAROON A.A. IDRIS S.M. ABDUL BAKI	Hon. Justice S. A. Abdul Baki
11.	KWS/SCA/CV/AP/IL/12/ 2009	07-07-2009	29-04-2010	Abdullahi Ibrahim Vs. Fatima Otte & 2 Others	A.K. IMAM FULANI I.A. HAROON A.K.ABDUL LAHI	Hon. Justice I. A. Haroon
12.	KWS/SCA/CV/M/IL/03/2010	01-03-2010	21-05-2010	Amudalat Akanke Vs. Jamiu Alao	I.A. HAROON A.A. IDRIS S.M. ABDUL BAKI	Hon. Justice A. A. Idris

13.	KWS/SCA/CV/M/IL/09/2010	19-04-2010	21-05-2010	Amudalat Akanke Vs. Jamiu Alao	I.A. HAROON A.A. IDRIS S.M. ABDUL BAKI	Hon. Justice A.A. Idris
14.	KWS/SCA/CV/M/IL/14/2010	07-06-2010	14-06-2010	Alhaja Salimatu & Six Others Vs. Alhaji Abdul Kadir Yusuf	I.A. HAROON S.O. MUHAMMAD A.A. IDRIR	Hon. Justice I .A. Haroon
15.	KWS/SCA/CV/M/IL/10/2010	12-02-2010	24-060-2010	Alhaji Issa Alabi Usman Vs. Alhaji Saliu Kareem	I.A. HAROON A.K ABDULLAHI S.O. MUHAMMAD	Hon. Justice A. K. Abdullahi
16.	KWS/SCA/CV/M/IL/02/201O	15-02-2010	24-06-2010	Alhaji Saliu Kareem Vs. Alhaji Issa Alabi Usman	I.A. HAROON A.K ABDULLAHI S.O. MUHAMMAD	Hon. Justice S. O. Muhammad
17.	KWS/SCA/CV/M/	07-06-2010	10-06-	Attairu	A. K. ABDULLAH	Hon. Justice A.

	IL/12A/2010		2010	Gbadagun Vs. Zenabu Manko	I A.A. IDRIS S.M. ABDUL BAKI	K. Abdullahi
18.	KWS/SCA/CV/M/IL/15/2010	12-07-2010	13-07-2010	Atanda Taiye Vs. Kuburat Taiye	S. O. MUHAMMAD A.A. IDRIS S.M. ABDUL BAKI	Hon. Justice S. O. Muhammad
19.	KWS/SCA/CV/M/IL/12/2010	28-05-2010	15-07-2010	Attairu Gbadagun Vs. Zenabu Manko	A. K. ABDULLAHI A.A. IDRIS S. M. ABDUL BAKI	Hon. Justice A. K. Abdullahi
20.	KWS/SCA/CV/AP/LF/07/2010	08-07-2010	21-09-2010	Umar Nda Sode Vs. Fatima Machinma	A. K. ABDULLAHI A.A. IDRIS A. A. OWOLABI	Hon. Justice A. K. Abdullahi

21.	KWS/SCA/CV/AP/LF/09/2010	04-08-2010	21-09-2010	Man Yahya Ndalima Vs. Sratu Man Yahya	A. K. ABDULLAHI A.A. IDRIS A. A. OWOLABI	Hon. Justice A. K. Abdullahi
22.	KWS/SCA/CV/AP/IL/13/2010	03-06-2010	22-09-2010	Hamidu Ibrahim Vs. Mrs. Mulikat Hamidu	S. O. MUHAMMAD A.A. IDRIS S.M. ABDUL BAKI	Hon. Justice S. O. Muhammad
23.	KWS/SCA/CV/AP/IL/08/2009	04-06-2009	23-09-2010	Suleman Omo Jimoh Vs. Falilat Jimoh	A. K. ABDULLAHI A.A. IDRIS S. M. ABDUL BAKI	Hon. Justice A. K. Abdullahi
24.	KWS/SCA/CV/AP/LF/06/2010	23-04-2010	28-09-2010	Mohammed Baba Vs. Awawu Mohammed Baba	A. K. ABDULLAHI A.A. IDRIS A. A. OWOLABI	Hon. Justice A. A. Owolabi

25.	KWS/SCA/CV/M/IL/17/2010	04-10-2010	07-10-2010	Muniru Kayode Elelu Vs. Nimotallahi Muniru	A. K. ABDULLAHI A.A. IDRIS A. A. OWOLABI	Hon. Justice A.K. Abdullahi
26.	KWS/SCA/CV/AP/IL/11/2010	28-05-2010	13-10-2010	Attairu Gbadagun Vs. Zenabu Manko	I.A. HAROON A.A. IDRIS S.M. ABDUL BAKI	Non. Justice I. A. Haroon
27.	KWS/SCA/CV/AP/LF/04A/2010	30-09-2010	09-11-2010	Egiboribo Sodegba Vs. Mohammed Ndamaka	S. O. MUHAMMAD S.M. ABDUL BAKI M.O.ABDUL KADIR	Hon. Justice S. O. Muhammad
28.	KWS/SCA/CV/M/IL/18/2010	12-10-2010	18-11-2010	Muniru Kayode Elelu Vs. Nimotallahi Muniru	I.A. HAROON M. O. ABDUL BAKI A. A. OWOLABI	Non. Justice A. A. Owolabi

29.	KWS/SCA/CV/AP/IL/16A/2010	22-09-2010	01-12-2010	Dr. Jimoh Rabiu Olusegun Vs. Bashirat Giwa	S.O. MUHAMMAD A.A. IDRIS S.M. ABDUL BAKI	Hon. Justic S. M. Abdul Baki
30.	KWS/SCA/CV/AP/IL/16/2009	05-11-2009	01-12-2010	Atanda Taiye Vs. Mrs. Kuburat Taiye	S.O. MUHAMMAD A.A. IDRIS S.M. ABDUL BAKI	Hon. Justice A. A. Idris
31.	KWS/SCA/CV/AP/LF/08/2010	09-07-2010	07-12-2010	Egiboribo Sodegba Vs. Mohammed Ndamaka	S. O. MUHAMMAD S.M. ABDUL BAKI M.O.ABDUL KADIR	Hon. Justice S.O. Muhammad
32.	KWS/SCA/CV/AP/PG/01/2010	14-10-2010	14-12-2010	Aishatu Teni Madu Vs. Madu Ibrahim	I.A. HAROON A. A. IDRIS A. A. OWOLABI	Hon. Justice I. A. Haroon

33.	KWS/SCA/CV/AP/IL/04/2010	08-03-2010	29-12-2010	Jimoh Abanise Vs. Faleelat Ajadi	S.O. MUHAMMAD A.A. IDRIS S.M. ABDUL BAKI	Hon. Justice S. O. Muhammad
34.	KWS/SCA/CV/M/IL/21/2010	26-11-2010	30-12-2010	Ibrahim Raji Vs. Rafatu Temimu	S.O. MUHAMMAD M.O.ABDUL KADIR A. A. OWOLABI	Hon. Justice M. O. Abdul Kadir

THE TRIAL COURTS AND JUDGES, 2010

S/ NO	CASE NUMBERS	PARTIES	TRIAL COURTS AND JUDGES	APPEAL SUCCEED/FAILS
1.	KWS/SCA/CV/M/ IL/15/2009	Alhaji Issa Usman Vs. Mall. Mohammed Alabi & two others	Upper Area Court 1 Ilorin Judge Hon. D. Y. Balogun	Motion Struck-out
2.	KWS/SCA/CV/AP/IL/17/2008	Hajia Bilikis Tinuola Sulu Gambari Vs. Alhaji Sa'adu Olaofe & 2 others	Upper Area Court 1, Ilorin Judge Abdul-Hamid Imam	Appeal Succeeds in part and fails in part (Retrial order, U.A.C Ilorin
3.	KWS/SCA/CVAP/IL/13/2008	Amudalat Akanke Vs. Jamiu Alao	Area Court 1 No 3, Ilorin Judge: Alh. M. B. Adeniyi Ibrahim Abdullahi	Appeal Fails
4.	KWS/SCA/CV/M/LF/01/2010	Ndafogi Abubakar Vs. Fatima Ndafogi Abubakar	Area Court 1, Shonga Judge:Marufu Bakare	Application Granted
5.	KWS/SCA/CV/AP/LF/06/2009	Salamatu Buke Vs. Tauheed Musa	Area Court 1, Bacita Judge; Alh. Mohammed Dangana	

6.	**KWS/SCA/CV/M/IL/ 01/2010**	**Jimoh Abanise** **Vs.** **Faleelat Ajadi**	**Area Court 1 No 2, Ilorin** **centre Igboro** **Judge:Hon. Mohammed Ndagi Audu**	**Application granted**
7.	**KWS/SCA/CV/M/IL/ 07/2010**	**Alhaji Issa Alabi Usman** **Vs.** **1. Mall. Muhammed Alabi** **2. Oseni Animasahun** **3. Alhaji Salihu Kareem**	**Upper Area Court 1, Ilorin.** **Judge: Hon. M. O. Abdukadir**	**Application granted**
8.	**KWS/SCA/CV/AP/LF/02/2010**	**Ndache Kolo** **Vs.** **Aminat Ndache Kolo**	**Area Court 1, Tsaragi** **Judge:Marufu Bakare**	**Appeal succeeds Retrial order by Upper Area Court 11, Lafiagi**
9.	**KWS/SCA/CV/AP/LF/03/2010**	**Ndafogi Abubakar** **Vs.** **Fatima Ndafogi Abubakar**	**Area Court 1, Shonga** **Judge:Hon. Marufu Bakare**	**Appeal Succeeds** **Retrial order by Area Court 1, Shonga**
10.	**KWS/SCA/CV/M/IL/ 05/2010**	**Jamiu Alao** **Vs.** **Amudalat Akanke**	**Area Court 1, No 3 Pake Ilorin** **Judge: Alh. M. B. Adeniyi**	**Application for Committal Fails in part and**

11.	**KWS/SCA/CV/AP/IL/12/2009**	**Abdullahi Ibrahim** **Vs.** **1. Fatima Otte** **2. Aminat Adebayo** **3. Baba Tapa**	**Ibrahim Abdullahi** **Area Court 1, No 1 Centre** **Igboro Ilorin** **Judge: Hon. I. B. Koto**	**succeeds in parts** **Retrial Order By Area Court 1, No 1 centre Igboro Ilorin**
12.	**KWS/SCA/CV/M/IL/03/2010**	**Amudalat Akanke** **Vs.** **Jamiu Alao**	**Judge: Alhaji M. B. Adeniji** **Ibrahim Abdullahi**	**Motion Fails**
13.	**KWS/SCA/CV/M/IL/09/2010**	**Amudalat Akanke** **Vs.** **Jamiu Alao**	**Judge: Alhaji M. B. Adeniji** **Ibrahim Abdullahi**	**Motion Fails**
14.	**KWS/SCA/CV/M/IL/14/2010**	**Alhaji Salimata & 6 other** **Vs.** **Alhaji Abdulkadir Yusuf**	**Ilorin**	**Motion Struck-out**
15.	**KWS/SCA/CV/M/IL/10/2010**	**Alhaji Issa Alabi Usman** **Vs.** **Alhaji Salihu Kareem**	**Upper Area Court Ilorin** **Judge;Hon. Ibrahim B. Koto** **Member: Hon. J. A. Olurinde** **Member: Hon. W. K. Salaudeen**	**Dismissed**

16.	**KWS/SCA/CV/M/ IL/02/2010**	**Alhaji Saliu Kareem Vs. Alhaji Issa Alabi Usman**	**Upper Area Court 1, Ilorin Judge; Hon. D. Y. Balogun**	**Application Succeeds in part and Fails in part**
17.	**KWS/SCA/CV/M/IL/ 12A/2010**	**Attairu Gbadagun Vs. Zanabu Manko**	**Area Court Grade 1,Tsaragi Judge: Hon. Mohammed Baba Yusuf**	**Application Granted**
18.	**KWS/SCA/CV/M/IL/ 15/2010**	**Atanda Taiye Vs. Kuburat Taiye**	**Area Court 1, No 1 Centre Igboro Ilorin Judge: Hon. Y. A. Kazeem**	**Application granted**
19.	**KWS/SCA/CV/M/IL/ 15/2010**	**Attairu Gbadagun Vs. Zenabu Manko**	**Area Court Grade 1, Tsaragi Judge:Hon. Mohammed Baba Yusuf**	**Application Succeeds in part and Fails in part**
20.	**KWS/SCA/CV/AP/LF/07/2010**	**Umar Ndaman Soda Vs. Fatima Machine**	**Area Court GD 1, Tsaragi Hon. M. B. Yusuf.**	**Appeal Struck-out on withdrawal**
21.	**KWS/SCA/CV/AP /LF/09/2010**	**Man. Yahaya Ndalima Vs. Saratu Man Yahaya**	**Area Court GD 1, Tsaragi Hon. M. B. Yusuf**	**Struck-out on withdrawal**

22.	**KWS/SCA/CV/AP /IL/13/2010**	**Mr. Hamidu Ibrahim** **Vs.** **Mrs. Mulikat Ibrahim**	**Area Court 1, No 1 Centre** **Igboro, Ilorin.** **Judge: Hon. Yusuf Abdulkarem**	**Appeal struck-out**
23.	**KWS/SCA/CV/AP /IL/08/2009**	**Sulaiman Omojimoh** **Vs.** **Falilat Jimoh**	**Area Court Grade 1, No 2 Centre Igboro, Ilorin.** **Judge: Kamal-Deen Abdul-Lateef**	**Appeal Struck-out**
24.	**KWS/SCA/CV/AP /LF/06/2010**	**Mohammed Baba** **Vs.** **Awawu Mohammed Baba**	**Area Court Grade 1, Tsaragi** **Judge: Hon. M. B. Yusuf**	**Retrial Denov at Lafiagi Area Court**
25.	**KWS/SCA/CV/M/I L/17/2010**	**Kayode Elelu Muniru** **Vs.** **Nimotallahi Muniru**	**Area Court 1, No 3 Pake Ilorin** **Judge: Abdulkadir Ibrahim Umar**	**Application Withdrawal**
26.	**KWS/SCA/CV/AP /IL/11/2010**	**Attairu Gbadagun** **Vs.** **Zenabu Manko**	**Area Court Grade 1, Tsaragi** **Judge: Hon. Mohammed Baba Yusuf**	**Appeal Struck-out**

27.	**KWS/SCA/CV/AP /LF/0^{A}/2009**	**Egiboribo Sodegba** **Vs.** **Mohammed Ndamaka**	**Area Court 1, Tsaragi** **Judge: Marufu Bakare**	**Application Granted**
28.	**KWS/SCA/CV/AP /IL/18/2010**	**Muniru Kayode Elelu** **Vs.** **Nim,atallahi Muniru**	**Area Court 1, No 3 Pake Ilorin.** **Judge: Abdulkadir Ibrahim Umar**	**Application Granted**
29.	**KWS/SCA/CV/AP /IL/16^{A}/2010**	**Dr. Jimoh Rabiu Olusegun** **Vs.** **Bashrat Giwa**	**Area Court No, 2 Centre** **Igoboro, Ilorin** **Judge: Hon. Mohammed Ndagi Audu**	**Application Failed And Overruled**
30.	**KWS/SCA/CV/AP /IL/16/2009**	**Atanda Taiye** **Kuburat Taiye**	**Aerea Court 1, No 1 centre** **Igboro Ilorin** **Judge: Hon. Y. A Kareem**	**Application failed and dismissed**
31.	**KWS/SCA/CV/AP /LF/08/2010**	**Egiboribo Sodegba** **Vs.** **Mohammed Ndamaka**	**Area Court 1, Tsaragi** **Judge: Marufu Bakari**	**Appeal Struck-out on** **Appellant Withdrawa**
32.	**KWS/SCA/CV/AP /LF/08/2010**	**Aishat Teni Madu** **Vs.** **Madu Ibrahim**	**Area Court 1 Patigi** **Judge: Hon. M. M. Jiyah**	**Struck-out**

33.	**KWS/SCA/CV/AP /IL/04/2010**	**Jimoh Abanise** **Vs.** **Faleelat Ajadi**	**Area Court 1 No 2 Centre-** **Igboro, IlorinJudge:Hon. Muhammeed Ndagi Audu**	**Retrial of Order by the Same Area Court.**
34.	**KWS/SCA/CV/M/ IL/21/2010**	**Ibrahim Raji** **Vs.** **Rafatu Temimu**	**Upper Area Court III Pake Ilorin**	**Application Fails**

2010 ADJOURMENTS

S/NO	CASE NUMBERS	DATE FILED	DATE DECIDED	DURATION
1.	KWS/SCA/CV/M/IL/15/2009	23/10/2009	17/02/2010	3 Months 25 Days
2.	KWS/SCA/CV/AP/IL/17/2008	11/11/2008	17/02/2010	1 Year, 3 Months And 6 Days
3.	KWS/SCA/CV/AP/IL/13/2008	21/08/2008	17/02/2010	1 Year, 5 Months And 27Days
4.	KWS/SCA/CV/M/LF/01/ 2010	11/01/2010	23/02/2010	3 Months 13 Days
5.	KWS/SCA/CV/AP/LF/06/2009	03/06/2009	23/02/2010	8Months 20 Days
6.	KWS/SCA/CV/M/IL/01/2010	08/01/2010	04/03/2010	1 Month 27 Days
7.	KWS/SCA/CV/M/IL/07/2010	17/03/2010	31/03/2010	14 Days
8.	KWS/SCA/CV/AP/LF/02/2010	11/01/2010	07/04/2010	2 Months 27 Days
9.	KWS/SCA/CV/AP/LF/03/ 2010	01/03/2010	07/04/2010	1 Month 6 Days
10.	KWS/SCA/CV/M/IL/05/2010	09/03/2010	14/04/2010	1 Month 6 Days

11.	KWS/SCA/CV/AP/IL/12/2010	07/07/2009	29/04/2010	9 Months 22 Days
12.	KWS/SCA/V/M/IL/03/2010	01/03/2010	21/05/2010	2 Months 20 Days
13.	KWS/SCA/CV/M/IL/09/2010	19/0-4/2010	21/05/2010	1 Month 2 Days
14.	KWS/ CA/CV/M/IL/14/2010	07/06/2010	14/06/2010	7 Days
15.	KWS/SCA/CV/M/IL/02/2010	15/02/2010	24/06/2010	4 Months 7 Days
16.	KWS/SCA/CV/M/IL/2A/2010	07/06/2010	10/06/2010	3 Days
17.	KWS/SCA/CV/M/IL/15/2010	12/07/2010	13/07/2010	1 Day
18.	KWS/SCA/CV/M/ L/12/2010	28/05/2010	15/07/2010	1 Month 17 Days
19.	KWS/SCA/CV/AP/LF/07/2010	08/07/2010	21/09/12010	2 Months 13 Days
20.	KWS/SCA/CV/AP/LF/09/2010	04/08/2010	21/09/2010	1 Month 17 Days
21.	KWS/SCA/CV/AP/IL/13/2010	03/06/2010	22/09/2010	3 Months 18 Days
22.	KWS/SCA/CV/AP/IL/08/2010	04/06/2010	23/09/2010	3 Months 19 Days
23.	KWS/SCA/CV/AP/LF/06/2010	23/04/2010	28/09/2010	5 Months 5 Days

24.	KWS/ CA/CV/M/L/17/2010	04/10/2010	07/10/2010	3 Days
25.	KWS/SCA/CV/AP/IL/11/2010	28/05/2010	13/10/2010	4 Months 16 Days
26.	KWS/SCA/CV/AP/LF/04A/2010	30/09/2010	09/11/2010	10 Months 9 Days
27.	KWS/SCA/CV/M/IL/18/2010	12/10/2010	18/11/2010	1 Month 6 Days
28.	KWS/SCA/CV/AP/IL/16A/2010	22/09/2010	01/12/2010	2 Months 9 Days
29.	KWS/SCA/CV/AP/IL/16/2009	05/11/2009	01/12/2010	1yr. 1 Month 24 Days
30.	KWS/SCA/CV/AP/LF/08/2010	09/07/2010	07/12/2010	4 Months 27 Days
31.	KWS/ CA/CV/AP/PG/01/2010	14/10/2010	14/12/2010	2 Months
32.	KWS/SCA/CV/AP/IL/04/2010	08/03/2010	29/12/2010	9 Months 21 Days
33.	KWS/SCA/CV/M/IL/21/2010	26/11/2011	30/12/2010	1 Month 4 Days

INDEX OF SUBJECT MATTER ON THE ANNUAL REPORT 2010

MOTION N0. KWS/SCA/CV/M/IL/15/2009

ALHAJI ISSA ALABI USMAN

VS

1. MALLAM MUHAMMED ALABI

2. OSENI ANIMASHAHUN

3. ALHAJI SALIU KAREEM

Sharp practice is seriously condemned in Islamic Law

APPEAL NO. KWS/SCA/ CV/AP/IL/17/2008

HAJIA BILIKIS TINUOLA SULU GAMBARI
VS
ALHAJI SA'ADU OLAOFE AND TWO OTHERS.

Court should strive to do substantial Justice and jettison technicalities.

Appellate Court should not set aside a decision of trial court which is derived from Holy Quran, Hadith and Ijima'.

Administration of Estate Law is not applicable to estate of a deceased Muslim.

New issue on appeal, no need of leave to raise same where it relates to issue of law.

Mere striking out of a case /matter without hearing the parties will tantamount to denial of right of fair hearing

3) **APPEAL NO. KWS/SCA/CV/AP/IL/13/2008**

AMUDALAT AKANKE VS JAMIU ALAO

Substantial Justice without undue regard to technicalities.

The rules relating to An-nasab (paternity) are different from that of Al-hadanat (custody) .

4) **MOTION NO. KWS/SCA/CV/M/LF/01/2010**

NDAFOGI ABUBAKAR VS FATIMA NDAFOGI ABUBAKAR

Application for an extension of time, grounds for granting it. Discretion of court.

Sickness is a good reason for granting extension of time.

5) **APPEAL NO. KWS/SCA/CV/AP/LF/06/2009**

SALAMATU BUKE VS TAOHEED MUSA

Appeal –withdrawal of the appeal by the applicant, amicable settlement by the parties, linking -out of the appeal, reasons for it.

When the appellant sought for withdrawal of the appeal he brought what the Court must do?

6) **MOTION NO. KWS/SCA/CV/M/IL/01/2010**

JIMOH ABANISE VS FALILAT AJADI

The Court should not allow technicalities to deny the substantial Justice.

7) **MOTION NO. KWS/SCA/CV/M/IL/07/2010**

ALHAJI ISSA ALABI VS MALLAM MOHAMMED ALABI AND TWO OTHERS.

What the court must do when all the requirements for validity of an application are met.

8) **APPEAL NO. KWS/SCA/CV/AP/LF/02/2010**

NDACHE KOLO VS AMINAT NDACHI KOLO

Parties must be accorded opportunity to defend any allegation against them before judgment.

9) **APPEAL NO. KWS/SCA/CV/AP/LF/03/2010**

NDAFOGI ABUBAKAR VS FATIMA NDAFOGO ABUBAKAR

Court should not determine a case before it where it will be tantamount to denial of right of fair hearing.

10) **MOTION NO. KWS/SCA/CV/M/IL/O5/2010**

JAMIU ALAO VS AMUDALAT AKANKE

The Court can not punish anybody for an offence that it's notice has not been brought to his attention.

11) **APPEAL NO. KWS/SCA/CV/AP/IL/12/2009**

ABDULLAHI IBRAHIM VS FATIMA OTTE AND TWO OTHERS

The case can be heard in law where a claim made on consanguinity mainly to establish blood relationship/paternity after the demise of the father or son and such claim of An-nasab is related to cases such as inheritance and maintenance, which may not be settled unless the former is determined.

When the requirement of the proof is not met by the appellant his case is bound to fail.

(12 **MOTION NO. KWS/SCA/CV/M/IL/03/2010**

AND

13) **MOTION NO. KWS/SCA/CV /M/IL/09/2010**

AMUDALAT AKANKE VS JAMIU ALAO

Application for a stay of execution is that applicant must discloseexceptional or special circumstances to warrant the grant particularlybalancing of the conflicting interest.

Where preservation of the subject matter can be guaranteedrestraint order of stay would not be made.

Principles guiding stay of execution in Islamic law are virtually thesame as in common law.

14) **MOTION NO. KWS/SCA/CV/M/IL/14/2010**

ALHAJA SALIMATA AND 6 OTHERS

VS

ALHAJI ABDULKADIR YUSUF

An application for the withdrawal of a motion by the applicant himself and there is no objection by the respondent, put an end to his case.

15) **MOTION NO. KWS/SCA/CV/M/IL/10/2010**

ALHAJI ISSA ALABI USMAN VS ALHAJI SALIU KAREEM

Where it is well confirmed that an application filed is an abuse of court processes it ought to be dismissed.

Any matter being determined in accordance with Islamic personal law in lower court and appealed against, falls within the jurisdiction of Sharia Court of Appeal.

16) **MOTIONNO. KWS/SCA/CV/M/IL/02/2010**

ALHAJI SALIU KAREEM

VS

ALHAJI ISSA ALABI

Where the applicant applies to commit the respondent to prison without clear proof of the allegation as required by Islamic law, it should be refused and dismissed.

17) **MOTION NO. KWS/SCA/CV/M/IL/12^{A}/2010**

ATTAIRU GBADAGUN VS ZENABU MANKO

Where the court sees merit in an application ex-parte it would be granted.

18) **MOTION NO. KWS/SCA/CV/M/IL/15/2010**

ATANDA TAIYE

VS

KUBURAT TAIYE

Substituted service would be ordered where a person is evading the service in order to compel him or her to appear in court.

19) **MOTION NO. KWS/SCA/CV/M/IL/12/2010**

ATTAIRU GBADAGUN VS ZENABU MANKO

The court should not allow the technicalities to prevent/disallow the substantial justice.

20) **APPEAL NO. KWS/SCA/CV/AP/LF/07/2010**

UMAR NDA SODE VS FATIMA MACHINMA

Where the applicant seeks for the withdrawal of his motion and there is no objection from the respondent it puts an end to his case.

21) **APPEAL NO. KWS/SCA/CV/AP/LF/09/2010**

MAN YAHYA NDALIMA VS SARATU MAN YAHYA

The applicant's prayer for the withdrawal of his application by himself should be granted as the claimant's silence put an end to his case.

22) **APPEAL NO. KWS/SCA/CV/AP/IL/13/2010**

HAMIDU IBRAHIM VS MRS MULIKAT HAMIDU

An appeal would be struck-out for lack of diligent prosecution.

23) **APPEAL NO. KWS/SCA/CV/AP/IL/08/2009**

SULEMAN OMO JIMOH Vs FALILAT JIMOH

An appeal would be struck-out for lack of interest in furthering prosecution of the appeal.

24) **APPEAL NO. KWS/SCA/CV/AP/LF/06/2010**

MUHAMMED BABA Vs AWAWU MOHAMMED

When the court lacks jurisdiction over a matter, it is bound to be struck out on appeal.

If the claim is related to one's right which is redeemable by monetary compensation or claim of debt and what related to it, the case would be heard where the defendant resides.

25) **MOTION NO. KWS/SCA/CV/M/IL/06/2010**

MUNIRU KAYODE ELELU VS NIMOTALLAHI MUNIRU

If the withdrawal of a motion is sought by the applicant himself the court will strike-out the motion.

26) **APPEAL NO. KWS/SCA/CV/AP/IL/11/2010**

ATTAIRU GBADAGUN Vs ZENABU MANKO

A matter can be struck out for lack of diligent prosecution.

27) **APPEAL NO. KWS/SCA/CV/AP/LF/04^{A}/2010**

EGIBORIBO SODEGBA Vs MOHAMMED NDAMAKA

An application would be granted if the court sees that all the requirements for its validity are met.

28) **MOTION NO. KWS/SCA/CV/M/IL/18/2010**

MUNIRU KAYODE ELELU Vs NIMOTALLAHI MUNIRU

Error or mistake is a ground for granting relief under Islamic law principle – mistake of counsel.

29) **APPEAL NO. KWS/SCA/CV/AP/IL/16[A]/2010**

DR. JIMOH RABIU OLUSEGUN Vs BASHIRAT GIWA

The Judge shall not give verdict on any matter before him without listening to the entire claim and proof.

30) **APPEAL NO. KWS/SCA/CV/AP/IL/16/2009**

ATANDA TAIYE Vs MRS KUBURAT TAIYE

Islamic law courts are set up to do substantial justice, all forms of technicalities which will act as detriment to the determination of substantial issues must be shunned.

If a person is popularly known with a synonym attached to him, whenever he is addressed by such a synonym he would normally not be enraged, for such a synonym must have become part and parcel of him.

The court can only lack jurisdiction when actions before it are not being properly constituted.

The courts can not strikeout a case based on curable defect as such will constitute a denial of right of fair hearing.

31) **APPEAL NO. KWS/SCA/CV/AP/LF/08/2010**

EGIBORIBO SODEGBA Vs MOHAMMED NDAMAKA

The application would be struck out when the applicant himself prayed for the withdrawal.

32) **APPEAL NO. KWS/SCA/CV/AP/PG/01/2010**

AISHATU TENI MADU Vs MADU IBRAHIM

The plaintiff would be left alone if he decides to terminate his appeal.

33) **APPEAL NO. KWS/SCA/CV/AP/IL/04/2010**

JIMOH ABANISE Vs FALEELAT AJADI

The practice of the court is to listen to the claim and proof whether or not the defendant/ respondent is present.

Oath of perfection is only applicable in monetary cases and not in a divorce case occasioned by maltreatment and beating as in this case.

It is a sacred duty of a judge to attend to all claims and counter-claims before him as failure to do so will amount to injustice and denial of right of fair hearing.

34) MOTION NO. KWS/SCA/CV/M/IL/21/2010

IBRAHIM RAJI Vs RAFATU TEMIMU

A plaintiff shall not be listened to except his complaint is well defined.

If an application lacks merit it is considered in-competent and should be struck out.

TES OF FILING AND DECISIONS 2010

S/NO	APPEAL NUMBER	DATE OF DECISION IN THE TRIAL COURTS	DATE FILES IN SHARIAH COURT OF APPEAL	DATE DECIDED IN SHARIAH COURT OF APPEAL
1	KWS/SCA/CV/M/IL/15/2009	20/05/2009	23/10/2009	17/02/2010
2.	KWS/SCA/CV/AP/IL/17/2008	29/10/2008	11/11/2008	17/02/2010
3.	KWS/SCA/CV/AP/IL/13/2010	07/08/2008	21/08/2008	17/02/2010
4.	KWS/SCA/CV/M/LF/01/2010	15/10/2009	08/01/2010	23/02/2010
5.	KWS/SCA/CV/AP/LF/06/2009	03/06/2009	03/06/2009	23/02/2010
6.	KWS/SCA/CV/APIL/01/2010	15/10/2009	08/01/2010	04/03/2010
7.	KWS/SCA/CV/M/IL/01/2010	15/10/2009	08/01/2010	31/03/2010
8.	KWS/SCA/CV/M/LF/02/2010	21/12/2009	11/01/2010	07/04/2010
9.	KWS/SCA/CV/AP/LF/03/2010	20/10/2009	01/03/2010	07/04/2010
10.	KWS/SCA/CV/IL/05/2010	17/02/2010	09/03/2010	14/04/2010
11.	KWS/SCA/CV/M/IL/12/2009	10/06/2009	07/07/2009	29/04/2010
12.	KWS/SCA/CV/M/IL/03/2010	17/02/2009	01/03/2010	21/05/2010
13.	KWS/SCA/CV/M/IL/09/2010	14/04/2010	19/04/2010	21/05/2010
14.	KWS/SCA/CV/M/IL/14/2010	20/05/2010	07/06/2010	14/06/2010
15.	KWS/SCA/CV/M/IL/10/2010		12/05/2010	24/06/2010
16.	KWS/SCA/CV/M/IL/02/2010	10/09/2008	15/02/2010	24/06/2010
17.	KWS/SCA/CV/M/IL/2A/2010	17/05/2010	07/06/2010	10/06/2010
18.	KWS/SCA/CV/M/IL/15/2010	04/11/2009	12/07/2010	13/07/2010
19.	KWS/SCA/CV/M/IL/12/2010	17/05/2010	28/05/2010	15/07/2010
20.	KWS/SCA/CV/APLLF/07/2010	06/07/2010	08/07/2010	21/09/2010
21.	KWS/SCA/CV/AP/LF/09/2010	06/07/2010	04/08/2010	21/09/2010

22.	**KWS/SCA/CV/AP/IL/13/2010**	**19/05/2010**	**03/06/2010**	**22/09/2010**
23.	**KWS/SCA/CV/AP/IL/08/2009**	**12/05/2009**	**04/06/2009**	**23/09/2010**
24.	**KWS/SCA/CV/AP/LF/06/2010**	**23/04/2010**	**23/04/2010**	**28/09/2010**
25.	**KWS/SCA/CV/M/IL/17/2010**	**30/07/2010**	**04/10/2010**	**07/10/2010**
26.	**KWS/SCA/CV/AP/IL/11/2010**	**17/05/2010**	**28/05/2010**	**13/10/2010**
27.	**KWS/SCA/CV/LF/04/2010**	**02/03/2010**	**30/09/2010**	**09/11/2010**
28.	**KWS/SCA/CV/M/IL/18/2010**	**30/07/2010**	**12/10/2010**	**18/11/2010**
29.	**KWS/SCA/CV/AP/IL/16/2010**	**13/09/2010**	**22/09/2010**	**01/12/2010**
30.	**KWS/SCA/CV/AP/IL/16/2009**	**04/11/2009**	**05/11/2009**	**01/12/2010**
31.	**KWS/SCA/CV/AP/LF/08/2010**	**24/06/2010**	**09/07/2010**	**07/12/2010**
32.	**KWS/SCA/CV/AP/PG/01/2010**	**06/10/2010**	**14/20/2010**	**14/12/2010**
33.	**KWS/SCA/CV/AP/IL/04/2010**	**15/10/2009**	**08/03/2010**	**29/12/2010**
34.	**KWS/SCA/CV/M/IL/21/2010**	**09/11/2010**	**26/11/2010**	**30/12/2010**

UNDISPOSED APPEALS/MOTIONS 2010

S/NO	MOTION / APPEALS NOVEMBERS	DATE FILED
1.	KWS/SCA/CV/AP/IL/10/2007	19/07/2007
2.	KWS/SCA/CV/AP/IL/15/2007	12/07/2007
3.	KWS/SCA/CV/AP/IL/10/2009	05/11/2009
4.	KWS/SCA/CV/AP/IL/17/2009	06/11/2009
5.	KWS/SCA/CV/AP/PG/03/2009	05/11/2009
6.	KWS/SCA/CV/AP/PG/04/2009	05/11/2009
7.	KWS/SCA/CV/AP/IL/01/2009	10/02/2009
8.	KWS/SCA/CV/AP/IL/13/2009	21/07/2009
9.	KWS/SCA/CV/AP/IL/06/2010	11/03/2010
10.	KWS/SCA/CV/AP/IL/08/2010	07/04/2010
11.	KWS/SCA/CV/AP/IL/19/2010	21/10/2010
12.	KWS/SCA/CV/AP/IL/20/2010	11/11/2010
13.	KWS/SCA/CV/AP/IL/22/2010	30/11/2010
14.	KWS/SCA/CV/AP/IL/23/2010	30/11/2010
15.	KWS/SCA/CV/AP/PG/02/2010	14/10/2010
16.	KWS/SCA/CV/AP/PG/03/2010	14/10/2010
17.	KWS/SCA/CV/AP/LF/05/2010	23/04/2010
18.	KWS/SCA/CV/AP/SH/01/2010	10/12/2010

Summary:

1. The Number of Motions/Appeals brought Forward from the Preceding year- 14
2. The Number of Motions/Appeals filed in the year 2010 – 38.
3. The Number of Motions/Appeals brought forward and filed in the year 2010 – 52
4. The Number of Motions/Appeals disposed in the year 2010–34.
5. The Number of Motions/Appeals Undisposed in the year 2010-18.

IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIAIN
IN THE SHARIA COURT OF APPEAL OF ILORIN JUDICIAL DIVISION
HOLDEN AT ILORIN ON 17TH FEBRUARY, 2010.

3RD RABIUL AWWAL,1431 AH

BEFORE THEIR LORDSHIP:

- **I. A. HAROON - KADI, S.C.A**
- **A. K. ABDULLAHI - KADI, S.C.A**
- **S. M. ABDUL BAKI - KADI, S.C.A**

MOTION NO. KWS/SCA/CV/M/IL/15/2009

BETWEEN:

ALHAJI ISSA ALABI USMAN - APPLICANT

VS

1. **MALL. MUHAMMAD ALABI**
2. **OSENI ANIMASHAUN - RESPONDENTS**
3. **ALHAJI SALIHU KAREEM**

PRINCIPLE:

i) A baseless claim has no position in Islamic law.

RULING: (Written and Delivered By A.K. Abdullahi)

This motion is seeking for an extension of time within which the applicant may file his notice of appeal against the ruling of the Upper Area Court 1, Ilorin delivered on the 20th May, 2009. The motion is supported by 14 paragraph affidavit. Chief D. O. Bello Esq. appeared for the applicant while Salman Jawondo Esq. with him, Saka Ayodeji Rasaki Esq. appeared for the 1st respondent and M.K. Temimu Esq. and H. O. Buhari Esq. appeared for both 2nd and 3rd respondents respectively.

Chief D. O. Bello Esq. read out his prayers and moved in terms of the motion papers and prayed us to grant his application. Opposing the application on points of law, the counsel for the 1st respondent – Saka Rasak Ayodeji Esq. submitted that the entire application is an abuse of court processes and it should be struck out. That by virtue of parag. 2 sub (vi) & (vii) of the supporting affidavit, the applicant had filed a notice of appeal to this Court within time and the said notice of appeal was attached as exhibit "A" to this application. That the action of the applicant for filing an

application for extention of time to file another notice of appeal while the first notice of appeal is still pending amounts to duplicity of cases which is an abuse of court process. He therefore prayed us to strike out the application in its entirety.

Both the counsel for the 2nd and 3rd respondents aligned themselves with the submissions of the counsel to the 1st respondent and they also prayed us to strike out or dismiss the application.

Responding to the submission of the counsel to the respondents, Chief D. O. Bello admitted the duplicity of the notice of appeal but said that the fault was not from him but was that of the Upper Area Court 1. That Upper Area Court 1 did not transmit the first notice of appeal to this court at the right time, hence the need for another notice of appeal. He then prayed us to grant his application as prayed.

Having listened to the submissions of the counsel for both parties, and having carefully perused the motion papers, the supporting affidavit and the attached exhibit "A" upon which the counsel for the applicant placed his reason for failure to appeal with time, and having also gone extra-miles in our findings to know about the letter the counsel said our registry wrote to Upper Area Court 1, Ilorin, demanding for its record of proceeding in respect of same matter, we discovered that the purported notice of appeal- exhibit "A" upon which the counsel placed his entire reasons for the delay, was nothing but a concocted / kangaroo notice of appeal. The said exhibit "A" was neither filed in Upper Area Court 1, Ilorin nor in the appropriate court-Sharia Court of Appeal registry. Our careful perusal of exhibit "A" further showed that the said (exhibit "A") notice of appeal bears no appeal number either from Upper Area Court 1, Ilorin where it was allegedly filed or in the Sharia Court of Appeal registry.

What aggravated the case of the counsel more was that, by virtue of parags. 6 &7 of the supporting affidavit, the counsel had used this worthless paper to secure a stay of the proceedings of Upper Area Court 1, in respect of the matter. In the same vain, he wanted to play the same game in this honorable court to get an extension of time. This type of sharp practice is seriously condemned by the holy Prophet (SAW) when he said in one of the famous hadith.

MEANING:

من غشنا فليس منا ...

" Who ever deceived us is not part of us," because he is an unreliable fellow in the administration of justice.

From the above observation, it is crystal clear that the counsel has based all his submissions on a worthless paper that requires no judicial consideration at all. It is therefore trite that one can not put something upon nothing and expect it to stay. It must certainly collapse.

We therefore, hold that this application must collapse in its entirety ant it is hereby struck out.

SGD	**SGD**	**SGD**
(S. M. ABDULBAKI)	**(I. A. HAROON)**	**(A,K. ABDULLAHI)**
KADI	**KADI**	**KADI**
17/02/2010	17/02/2010	17/02/2010

IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIA
IN THE SHARIA COURT OF APPEAL OF ILORIN JUDICIAL DIVISION
HOLDEN AT ILORIN ON WEDNESDAY 17TH FEBRUARY, 2010
13TH RABIUL AWWAL 1431A.H.

BEFORE THEIR LORDSHIP:

-	**I.A. HAROON**	-	**KADI, S.C.A**
-	**A.A.IDRIS**	-	**KADI, S.C.A**
-	**S.M. ABDUL BAKI**	-	**KADI, S.C.A**

APPEAL NO. KWS/SCA/CV/AP/IL /17/2008

BETWEEN:

- **HAJIA BILIKIS TINUOLA SULU GAMBARI**

VS

- **ALHAJI SA'ADU OLAOFE AND 2 OTHERS.**

PRINCIPLES:

i) Letter of Administration is different from wakalah and is inadmissible for an estate of a deceased Muslim.
ii) Door of litigation should not be shut against claimants.
iii) Necessary parties are those in the view of Islamic law whose interest are affected in the cause or matter.
iv) Non-joinder of necessary party does not vitiate proceeding.

BOOK/STATUTES REFERRED TO:

1. Order II part 1 of the Area Court Procedure Rules Cap A9, Law of Kwara State 2006.
2. Section 10(i) (11) and 13(a) of the Sharia Court of Appeal Law Cap S4.Laws of Kwara State 2006
3. Order 23, Rule 3 of the Area Court Civil Procedure Rules.
4. Orders 3, Rule 3 of the Area Court Civil Procedure Rules.
5. Section 1Sub I (b) and (2) of Administration of Estate Law Cap A1 Laws of Kwara State 2006.
6. The Glorious Qu'ran (Chapter 4, Verse:58)
7. Al- Adilat Al-Qada'iyyat fi Ash-shari'at Al- Islamiyyat, page 167.
8. Section 36 of Constitution of the Federal Republic of Nigeria 1999.
9. Oloruntoba - Oju and others Vs Professor Shuaib O. Abdul Rahim and others (2009), 6 SCNJ at 26.
10. Hope Democratic party (HDP) Vs.INEC and others (2009) 3 SCNJ 45 at pp 60-70.

11. Maisamar Marwa vs Tanko Abdul (1986) 1 NWLR pt 17, Page 437 at 456 Holden T.
12. Sec. 1 (i) & (2) of Administration of Estate Law Cap A1, Laws of Kwara State 2006.
13. Dr. Salihu Al- Fauzan, The Summary of Islamic Jurisdition Vol 2 page 604 paragraph 3.
14. Registerd trustees CAC VS Sadiku (2002) FWLR (pt 95) pages 38 & 247.
15. Safeti Vs Safeti (2007) 2 NWLR PT 107 page 68-90, paragraph 4 (a-c).
16. Green Vs Green (1987) NWLR pt 611 page 482 ratro 14.
17. Lamidi Vs Turaki (1999) NWLR pt 600 page 578, page 1 ratio 1 per Amazi JCA.
18. Order 9 (a) Sharia Court of Appleal Rules.
19. Alhaji Issa Alabi Usman Vs Alhaji Saliu Kareem (1995) 2 SCNJ page 171.
20. Order 3 R 7 para 2 SCA Rules.
21. Order 23 R 3 Area Court law of Kw. St. 2006.

JUDGEMENT: WRITTEN AND DELEVERED BY A.A. IDRIS:

This is an appeal against the ruling of the Upper Area Court 1, Ilorin, delivered on the 29th October, 2008. After hearing the addresses of the counsel from both sides representing the appellant and respondents respectively, the lower court struck out the case. Being dissatisfied with the aforesaid ruling of the court below, the appellant appealed to this court on 3rd July, 2008.

The appellant filed the following five grounds of appeal.

Ground One:

The ruling delivered by the sole judge on 29th October, 2008, in the muslim/matter/suit at the Upper Area Court 1, Ilorin is unreasonable, unwarranted and cannot be supported having regard to the weight of evidence.

Ground Two:

The trial sole judge misdirected himself in facts and law when he stated as follows:

a) That the court lacks jurisdiction to adjudicate on the matter.
b) That no proper defendants before it.
c) That the names of the persons as contained in letter of administration (without will) granted on 24th day of May, 1993 by the High Court of Justice, Ilorin are the proper defendants i.e. " exhibit 7" attached to the motion and notice dated 1st day of July, 2008.

PARTCULARS OF MISDIRECTION

The names of all the persons which appeared on "exhibit 7", are the proper defendants to be sued.

i) This Court is not competent to adjudicate on the suit in that defendants are not the administrators to the estate of His Highness Alhaji Zulu Karnain Gambari Muhammed.

ii) The proper persons to be sued as defendants are the people whose names appeared as administrators in exhibit 7, attached to the motion on notice dated 1st July, 2008.

Ground Three

Exhibit 7, which was relied upon by the trial judge, was a document, which was not certified by the Probate Registrar who issued it.

Ground Four

The trial sole judge erred in placing heavy reliance on exhibit 7 attached to the motion on notice dated 1st July, 2008.

PARTICULUAR OF ERROR

Muslim law or Islamic law does not recognize letter of administration or administrators, in the distribution of a deceased “muslim on his properties be it moveable or immoveable.

6. Additional grounds of appeal will be filed on the receipt of record of proceeding/ruling of the trial court i.e. lower court.

7. **RELIEFS SOUGHT FROM SHARIA COURT**

(a) An order of this honorable court setting aside the ruling of the lower Court.

(b) An order directing the Upper Area Court No 1, Ilorin or in alternative another upper area court with co-ordinate jurisdiction to hear and determine the suit.

However, when the case came up for hearing on 24/06/2009, the counsel for the 1st respondent said that they were not ready to proceed with the case because they had just got the records of proceedings and as such they requested for a short adjournment to enable them study the records of proceedings.

The counsel for the 2nd and 3rd respondents said in their reaction, that since they had withdrawn their appearance for the 1st respondent they believed that it would not serve the interest of justice and fair hearing to deny the 1st respondent the opportunity to study the records. They then applied for another date subject to the convenience of the court.

In his response, the counsel for the appellant B.A. Abdul Esq. said though he had said earlier that he was ready for hearing but due to the new development, he thought it would be neater for the court to hear all the counsels at once.

In line with this, the court opined that the counsel to the 1st respondent needed time to study the records recently given to him in the interest of justice. As a result of the above, the court adjourned the case to October, 2009.

When the court resumed sitting on the 7th day of October, 2009, the counsel to the appellant, B.A. Abdul Esq., said that the notice of appeal was filed against the ruling of the lower court, Upper Area Court I, Ilorin, which was delivered on 29th October, 2008 in case No: UAC 1/CVF/M/23/2008.

The notice of appeal contained four grounds of appeal and sought the indulgence of this court to argue the omnibus ground first and thereafter argue grounds 2, 3 and 4 together. He submitted that the ruling of the trial court as contained on pages 103 to 118 of the records especially page 115 was unreasonable, unwarranted and against the weight of evidence. This is because it was not cogent, and did not support or based on exhibit 7, which was a letter of administration, (without will) issued by the Probate Division of High Court of Justice, which was governed by Administration of Estate Law Cap A1 Laws of Kwara State 2006. This would enable the beneficiaries to collect all the entitlements of the

deceased, Alhaji Zulu Karinain Gambari from the Kwara State Government, all other authorities and organizations in which the deceased had monetary transactions and businesses.

He went further to confirm that late Alhaji Zulu Karinain Gambari was until his death the Emir of Ilorin, who practised and died as muslim. He submitted that the trial court relied on exhibit 7 to deliver its ruling. Still on omnibus, the counsel to the appellant concluded that exhibit7 was not known to Islamic law. He therefore urged the court to allow the omnibus ground of appeal in the appellant's favour.

On grounds 2, 3 and 4 the learned counsel to the appellant formulated three issues for determination and they are as follows:-

(i) Whether the lower court was right in its ruling that the proper and necessary defendants were not before the lower court and competent and proper person to be sued are the names contained in exhibit 7. The names contained in exhibit 7 are (1) Alhaji Baba Zulu Gambari (2) Hajiya Zaynab (3) Hajia Ayo – OLA Zubair, (4) Hajia Funmilayo Buhari and Wura-Ola.

(ii) Whether Islamic law recognizes exhibit 7.

(iii) Whether the female children of a deceased who died as a muslim and practised Islamic tenets during his life time are competent to act as administrators under Islamic law leaving out male children who can be sued as defendants in a suit based on distribution of their fathers' estate.

The learned counsel averred that there is a presumption that once the record of proceedings had been certified and forwarded to an appellate court it is considered an authentic document unless and except if the contrary is proved and the appellate court is entitled to refer to it in deciding the dispute relating to it.

He further submitted that this court is bound to determine any matter in dispute before it in line with Islamic law and procedures and that every Islamic court is bound to adjudicate on facts and evidence placed before it. To support his stand, he referred the court to Order II part 1 of Area

Court Civil Procedure Rules Cap A9, Laws of Kwara State and Section 13 (a) of the Sharia Court of Appeal law CAP S4 Laws of Kwara state. Furthermore, he submitted that affidavit/ evidence in Islamic law remained an assertion, which must be proved or admitted before it could be considered as evidence in Islamic law. He further conceded that the subject matter of this appeal is based on Islamic law as defined by Section 10 (i) Sharia Court of Appeal Law and Section II (c) of the same Laws of Kwara State Cap S4. He also added that Evidence Act is not binding on Islamic law courts.

The counsel for the appellant further explained that all matters governed by Islamic law, the principle and procedure must follow Islamic principles. According to him, the essential attribute of a court of law is to do justice and that justice must not only be done but must be manifestly seen to be done accordingly, he said that immediately the court is not seen to be doing justice, such court ceases to be a regular court and becomes a kangaroo court.

The learned counsel for the appellant further submitted that if all the issues raised by him were in the negative, he urged the court to make an order for joining all the names as contained in exhibit 7 excluding who had died.

In his further submission, he said that both Sharia Court of Appeal and Area Court have the power to make persons defendants and quoted Section 10 (2) Sharia Court of Appeal Law and Order 9 (9) Sharia Court of Appeal Rules. These sections according to the learned counsel for the appellant, have given the Sharia Court of Appeal the power and jurisdiction on the above and also cited Order 23 Rules 3 of the Area Court Civil Procedure Rules which conferred on the area court the power to make person(s) defendants. In the same vain he submitted that non-joinder or misjoinder of a person or persons did not defeat the course of action particularly the jurisdiction of the lower court.

The learned counsel averred that the lower court relied on technicalities which are no more in vogue and that substantial justice is the order of the day.

More so, that courts are set up to do substantial justice and eradicate all acts that would serve as an impediment to the determination of matters between the parties. He added

that the parties to a suit are duty bound to comply with the rules of court. And that in the interest of justice, the parties to a suit should be accorded reasonable opportunity in appropriate circumstances to enable their claims to be adequately investigated and accordingly determined on merit. On this, the counsel cited the case of Oloruntoba Oju and Ors. vs. Prof. Shuaibu O. Abdulrahim and others (2009), 6 SCNJ at 26. Learned counsel to the appellant further submitted that striking out the case at the lower court is to lend credence to unnecessary technicalities. According to him, the appellant should be permitted to ventilate his grievances through the trial. Moreso, that all courts had been enjoined to eradicate technicalities in their adjudications. He cited the following case, Hope Democratic Party (HDP), Vs. INEC and others (2009) 3 SCNJ 45 at PP. 60 – 70. He finally urged the court to resolve the issues raised in ground three in appellant's favour and allow the appeal. He referred the court to the following case; Maisamar. Maiwa vs. Tanko Abdul (1986) NWILR (pt 17), 437 at 456 holden T.

B.R. Gold Esq., the counsel to the first respondent argued contrary to the submission of the appellant's counsel. He submitted that the counsel for the appellant had misconceived the jurisdiction of this court as it relates to the lower court as per the grounds of appeal filed before this court. He further submitted that by combined effect of S 10 (1) of Sharia Court of Appeal Law Order 3 Rules 7 Sub Rule (i) and (j) of Sharia Court of Appeal Rules, this court is only empowered to look into decision of the lower court by examining the records of the lower court placed before it along with the complaints of the appellant in the ground or grounds of appeal and examine and determine the proceedings of the lower court whether from the complaints of the appellant, the lower court came to a wrong decision. He further submitted that the notice of appeal before this court is premised on four (4) grounds, which is the complaint of the appellant.

The appellant, according to him, was asking this honourable court to set aside the ruling of the lower court or to order the lower court or other area courts to determine the suit of the appellant. He then enjoined this court to utilize its powers under Section 10 of Sharia Court of Appeal Law, and Order 3 Rule 7 Sub Rule (3) of Sharia Court of Appeal Rules

to go through the records of the lower court to see whether the lower court had come to a wrong conclusion. He referred the court to pages 1- 8 of the records whether there are claims of the appellant in the records of the lower court. On pages 9 – 82, of the records the respondents raised the objection that the lower court has no jurisdiction to determine the claims of the appellant at the lower court. Also, pages 83 – 102 of the record of proceedings contained arguments for and against the appellant's case. On pages 103 – 118, the lower court delivered its ruling. In its wisdom, the court only considered one out of several objections because to it there was no proper party before it and as such struck out the case. He said that page 115 of the records is very instructive or relevant to the ruling of the event. According to him, page 118 contained the order of the court striking out the case. The learned counsel therefore said that the issue to be determined in this situation is whether striking out the suit of the appellant at the lower court on the ground that there is no proper defendant before it is judicious or otherwise. He went further to say that page 3 of the records of claims of the appellant was premised upon the affirment of the respondent filed on objection of the trial court that there is no proper defendant in the court. On page 48, the respondent showed exhibit 7 explaining those who could talk about the properties of her father and not the sued parties. The learned counsel further elaborated that in the course of argument, the learned counsel to the appellant conceded that the people named in the letter of administration are the proper parties that could be looked for on account of the properties of the deceased. That laid credence to the assertion of the respondent that they are not proper parties to be sued. On pages 18 - 47 of the records of proceedings, the counsel said that the respondent showed that the appellant father's properties had been completely distributed according to Islamic law by a panel constituted and headed by Hon. Justice AbdulKadir Orire (retired). The learned counsel then said that it was on the above that the trial Judge only determined the proper defendant and held that there had not been proper defendant before the court. In view of the above, he asserted that the lower court had wrongly decided the case.

On Order 23 Rule 3 of the Area Court Civil Procedure Rules, the learned counsel R.B. Gold said that appellant had

submitted that the trial court could join anybody as defendant. Contrary to his submission, R.B. Gold submitted that it is not the duty of the court to join anybody in a suit but that could only be done on application. He therefore pointed out that argument did not arise at the lower court for the decision of the lower court.

The issue formulated by appellant did not relate to grounds 2-4. It is trite that issues must relate to the ground and that is the basic reasons why the grounds are argued and not issues. Also, the issue of certification of documents did not arise at the lower court for its consideration. He therefore urged the court to discountenance ground 3 because it is an afterthought, which never came up at the lower court. Furthermore, on the argument he said that the Islamic law did not recognize letter of administration. In the same vein, according to him, the issue of whether a female child of a deceased could stand, as an administrator did not come up in the lower court. He further declared that Order 3, Rule 7, Sub Rule 2 of the Sharia Court Rules stipulates that the appellant needs the leave of this court to raise an issue which was not raised in the lower court. And lack of negligence to follow the above procedures served as an obstacle for the court to hear the case. On the cited case, Maisamari, R.B. Gold said that the cited case was distinguishable from the instant case. According to him, what was determined in that cited case was that the lower Sharia Court transferred a case to the Customary Court.

Finally, the learned counsel, R.B. Gold, prayed this court to dismiss the appeal and affirm the judgment of the lower court so that the appellant will be at liberty to bring proper defendants to court for the adjudication of her case.

When the counsel for the second and third respondents wanted to react to the submission of the appellant, U.S. Imam Esq appealed to this court to allow his learned friend, Ishola, Esq. to argue for second and third respondents as it was done at the lower court. The counsel for the appellant had no objection and as such his application was granted. On his part, Ishola Esq, called the attention of this court to a process filed on 4th May, 2009 on behalf of the second and third respondents. He submitted that they had three issues to argue:-

(1) Whether the notice of appeal and grounds of appeal contained therein are competent, cogent, tenable, and compelling grounds upon which the ruling of lower court can be varied, invalidated, nullified or tempered with under Islamic law.

(2) Whether the learned Islamic judge of the lower court did not rightly find any fact on exhibit 7 before striking out the case of the appellant having regards to provisions under Islamic law on the judicial adjudication.

(3) Whether the ruling of the Islamic judge of the lower court cannot and ought not to be upheld or affirmed on the other grounds contained in the Notice of intention to pray this court to that effect filed on the 4th May, 2009 by the second and third respondents given the fact that these other grounds are equally raised and argued before the lower court but only the lower court refused to pronounce on them.

On issue number 1, whether the notice or ground of appeal are cogent and competent for this court to set aside the ruling of the lower court, the learned counsel, Ishola Esq., submitted that the notice of appeal suffered incurable defect under Islamic law and that a careful study of the notice of appeal would reveal that it was drafted and informed by another practice different from Islamic law procedure. He further observed that for a Notice of Appeal to be valid before this court, it must not leave anybody in doubt as to who author the notice of appeal, because once the identity of the author is unknown, the notice of appeal is incompetent under Islamic law known as garar (deceit) the identity of any person according to Ishola Esq could only be known by the name of that person and or his father but not by purported signature. This is in-line with Quranic provision, which stipulates thus; - " call them by their names or of their parents".

Ishola Esq. submitted that by the notice filed in this case, there was no name put on it, what was at the end of it is the word signed, that they did not know the name of the person who the appellant is. This is a serious violation of practice of this court. Since the notice of appeal is incompetent the appeal also is incompetent. He therefore urged this court to strike out the notice of appeal. He further submitted that the

grounds contained in the notice of appeal are not competent for somebody who is abreast of the legal practice. What is usual for legal practitioners who regularly appear before Islamic courts is that they should not have difficulty in understanding that the thought and language adopted in drafting all the grounds are bye-product of common law system and therefore the learned counsel Ishola Esq. then submitted that the notice of appeal was not competent for adjudication before this court. He further submitted that ground 1 of the Notice of Appeal had been couched like that of omnibus ground of appeal which is couched in the form of common law criminal appeal. And as a result of this, he further submitted that the grounds of appeals are equally not competent to warrant the decision of the lower court to be set aside. To him, under Islamic law the appellate court could not invalidate decision of lower court unless such a decision is against the provision of Quran and Hadith. He referred the court to the book of Dr. Salih Fauzan the summary of Islamic Jurisdiction Vol II Page 704 paragraphs 3. And also cited the case of Safeti vs Safeti (2007) 2 NWLR Pt 107 pages 68 – 90 paragraph 4 and A – C. He concluded that the decision of the lower court is in line with the Quran, the Sunnah and Ijma and urged the court to uphold the same.

This learned counsel Ishola Esq. went on to submit that the decision of the lower court enjoined the presumption of validity and it is for the appellant to rebut that presumption. He said since the appellant had failed to do so, he urged the court not to overturn the judgment.

On issue No 2, the learned counsel to the 1st respondent submitted that the complaint of the appellant in grounds 3 and 4 is that the lower court was wrong to have relied on exhibit 7 on certification. He submitted further that it is not the duty of an individual to illegalize or declare that something is unknown to Islamic law except that thing is expressly declared to be illegal. He said this is because the position of Islamic law on any issue is permissibility and validity, thus letter of administration is permitted to be used by Muslims. He further referred the court to the book of Dr Salih Fauzan.

He submitted that the letter of administration as it is being used in this part of the country should be regarded as part of custom and practices of people of Nigeria. As such, if

such custom is not contrary to the norms of Islam, it should be seen as valid. He therefore urged the court to affirm the position of exhibit 7. He further submitted that exhibit 7 merely appointed people named therein as administrators of the estate of the deceased Emir, it did not share the estate. He said further that exhibit 7 serves as a record in whose custody is the property/estate of the deceased Emir in case anybody wanted to know anything about the estate so the lower court was right to have relied on exhibit 7. He further submitted that this court had held in several cases that relevance is the basis of admissibility and reliance on any Islamic law matters. He further emphasized that exhibit 7 is very relevant and the lower court was right to have relied on it.

The learned counsel further explained that under Islamic law the argument that a document emanated from Probate Registry of the High Court is inadmissible is wrong. This is because if that position is taken, birth certificate and the like would suffer the same fate, since it might not emanate from Islamic quarters. He concluded that the submission of the learned counsel to the appellant could not hold water.

The learned counsel further contended that people mentioned in exhibit 7 are known under Islamic law as al-wasy and finally on issue No. 2 he urged the court to uphold the decision of the lower court.

On issue No. 3 Ishola Esq. submitted that all the grounds stated on their notice of intentions filed on 4/5/2009 were part of the five grounds of objection placed before the lower court on which argument for and against were canvassed. He went further to say that the arguments of the respondent on the other grounds is contained on pages 82 – 91 of the record and pages 96 – 101 contained the reply by the appellant and that pages 101 – 102 contained the reply on points of law by the respondent but the lower court relied on one ground i.e. ground I to strike out the matter. He, therefore, urged the court to use other grounds to uphold the decision of the lower court.

In his response, B.A. Abdul Esq. submitted that the book cited ie. Dr. Salih Fauzan is just the opinion of the author and not binding on this court. According to him, he stated that this court has its own procedure and rules and there is no rule

that stipulates that the appellant should put his name or the name of his father. He therefore affirmed that his conduct is in line with the procedural aspect of sharia. He referred the court to Section 1(a) and (b) especially Section 1(b) and concluded that this law is not applicable to the estate that is governed by Islamic law. He finally urged the court to discountenance the submission of the respondent and rule in favour of the appellant.

We have critically gone through the grounds of appeal filed by the appellant, the record of proceedings, particularly the ruling of the lower court, the appellant's statement of claim, all the exhibits attached thereto, the respondents' motion on notice together with the affidavits in support and against with the exhibits attached there to.

In the same vein, we have equally considered the authorities cited by the learned counsel on both sides and we are of the view that, the main issues for determination are as follows:-

1. Whether the trial court was right to have relied on exhibit 7, (the letter of administration) to have struck out the suit before it.
2. Whether the non-joinder or misjoinder of person(s) defeated or affected the cause of action especially where the court has jurisdiction over the cause of action?

On the issue of the letter of administration, we have carefully perused the submissions of learned counsel for the appellant and the counsel for the first, second and third respondents respectively. What is left to be determined in these submissions is whether the letter of administration is admissible for governing the estate of a deceased Muslim governed by Islamic legal system. The relevant provision is Administration of Estate Law, Cap AI Laws of Kwara State 2006. Section 1 subsection 1 (b) It provides as follows:-

> *"This law shall not apply to the estate of deceased person, administration of which is governed by Islamic Law".*

And to cap it all, subsection (2) stipulates that:-

> *"The provision of this law relating to the administration of the estate of a person who died in-*

testate or the indisposed part of the estate of a testator shall apply only to person who contract a valid monogamy marriage and survived by a spouse or issue of such marriage".

Going by the above provisions of Administration of Estate Law Cap A1 Laws of Kwara State, we want to consider a number of issues in reaction to the submission of the counsel to the appellant on the one hand and that of the respondents on the other. In doing this, we considered it duty-bound on this court to determine whether or not the trial court was right to have relied on exhibit 7 to strike out the suit before it. We hold that the letter of administration in western concept is different from wakala, which is known as manager of any endowment or estate. This is not admissible for an estate of a deceased Muslim, because of the foregoing reasons.

We opined that to ignore the above law by the trial court and in the process of adjudicating upon matters of this nature means inadvertent subversion of Islamic legal system. The records before us conspicuously showed that the trial court is yet to comply with the provision of Administration of Estate Law Cap 1A Laws of Kwara State. If he had he would not have relied on exhibit 7 to decline jurisdiction or strike out the suit before it. We therefore resolved this issue in favour of the appellant.

On the issue of the attribute of court of law which the counsel to the appellant said that justice must not only be done but must be manifestly seen to be done accordingly. We agreed with this and believed that it is true that all courts must strive to do substantial justice in all cases before them not only this they must jettison technicalities and should not allow same to stand in their way to dispensing justice.

We have also gone through the book of Dr. Salihu al-Fauzan cited by the learned counsel, Ishola Esq for the first, second and third respondents respectively, it is our candid view that the quotation is misconceived. Therein the learned author talks about the oath procedure. It therefore did not help the cause of the respondents for it is irrelevant and a non issue, because he was trying to establish the admissibility of the letter of administration in islamic law rather than the administration of oath procedure as enumerated by

the author. Also the authority Safeti Vs Safeti (2007) 2 NWLR (Pt 1017) at 68 – 69 paragraphs A –C cited by Ishola Esq did not help the respondents. Ishola Esq. submitted that no court can set aside any decision which is in conformity with a provisions in the Holy Quran, Hadith and Ijma.

We opined that this is the truth nothing but the truth but it is not applicable in this case because the decision of the trial court was contrary to the sources of Islamic law. In this wise the counsel is trying to blow hot and cold and at the same time the decision of the trial court is not in line with sharia.

Quran 4, verse 58.

Whenever you judge between people to judge with justice (with fear of God (وإذا حكمتم بين الناس أن تحكموا بالعدل)

In over view, parties should be accorded opportunity to ventilate their grievances through trial and not to shut the door of litigation against them, especially when there are triable issues to be determined by the court.

Also when the learned counsel Ishola Esq. quoted that a man should be known by the name of his fathers, he has misconceived the verse in question because the episode that led to the revelation of this verse is totally different from the issue at hand. It has no relevance to this case and as such it is irrelevant.

On the issue of the necessary parties, we agree partly with the counsel to the respondents that not all the parties before the trial courts are necessary parties. We opined that every person against whom an allegation is made must be confronted with the allegation so that he can offer his defence. Thus the respondent about whom the appellant complains that part of the estate of her deceased parent is under his custody is presumed a necessary party and he must be made a party under Islamic practice and procedure, unless and except if it is proved other wise.

The author of al-Adilat al-Qadaiyat fil-Shariat Islamiiyat P.167 says that the dispute/quarrel must occur between two persons before we can have plaintiff and defendant. He says:-

On the part of parties:

The necessary parties are the people between whom there is a quarrel and dispute. These people are known as plaintiff and defendant. The parties may be more than one person and during the proceeding other necessary parties may be joined in the process.

أطراف الدعوى هم الأشخاص الذين بينهم الخصومة والنزاع ويطلق عليهم المدعي والمدعي عليه وهما قد ينفردان أو يتعدان كما قد ينضم إليهم في الدعوى.

For the above reasons it is dispute or quarrel between two parties that result into plaintiff and defendant as such the defendant will be known as necessary parties. We also refer to the case of Green Vs Green (1987) NWLR Pt 611 page 482 ratio 14.

> "Necessary parties are those who are not only interested in the subject matter of the proceedings but also who in their absence, the proceedings could not be fairly dealt with"

The appellant Hajia Bilikis ZuluKarinain made serious allegation against the 1st respondent, which should not be treated with impunity as such Alhaji Saadu Ola-Ofe (The head of Olaofe family and the Daudu of Ballah, is a necessary party to the case, unless and except it is proved otherwise through Islamic practice and procedure. Therefore he is presumed a necessary party to this case while Alhaji Aliyu Olayinka Gambari and Alhaji Ayuba Gambari (Seriki Salama) are not necessary parties, because there was no allegation against them beside their relationship with the deceased Emir. Same principle was held in the case of Lamido Vs Turaki (1999) NWLR part 600 Page 578, Page 1 ratio 1 Per. Amazi JCA.

It is settled that the mere fact that the 2nd and 3rd defendants are a relation and personal assistant of the deceased respectively, did not make them proper parties to the suit because there was no prima-facie case against them whatsoever that could convince the court that they are custodian of the property of the deceased. In this situation one can confidently say that the case can be heard and determined in the absence of the second and third respondents.

We therefore, hold that the 2nd and 3rd respondents who are the relation and personal assistant to the deceased Emir are not necessary parties in this matter, and their names ought to

have been struck out from the inception of this case. We therefore apply Section 10 (2) of the Sharia Court of Appeal Law, Laws of Kwara State of Nigeria, 2006 and strike out the names of improper parties and order the Area Court to join all the necessary parties.

On the issue of female child standing as administrator of an estate of deceased Muslim and non certification of exhibit seven. It is our view that ordinarily, issues which have not been raised at lower court could not be raised on appeal but where such issues are matter of law, such issues can be raised on appeal, see the case of Alhaji Saidu Usman (deceased) substituted by Alhaji Issa Alabi Usman vs Alhaji Salihu (1995) 2 Page 171 SCNJ since we have held earlier that exhibit 7 is against the statutory law of Kwara State it is not applicable to the estate of a deceased muslim who is governed by Islamic law, then the issue of certification does not arise.

We disagree with the submission of the counsel to the first respondent, Mr. Gold Esq. that the appellant needs the leave of this court to raise an issue which was not raise in the lower court by citing Order 3 Rule 7 paragraphs 2 of the Sharia Court of Appeal Rules, This rule does not talk about seeking leave before raising any issue not earlier considered by the lower court. This submission is not in line with the cited rules of this court. This is misconceived and cited out of the context.

The next issue is whether the non-joinder or misjoinder of a person(s) defeated or affected the cause of action especially where the court has jurisdiction over the cause of action.

We are in complete agreement with the learned counsel to the appellant that Order 23 Rules 3 of the Area Court Civil Procedure Rule confers on the Area Court the power to make person(s) defendants, and that non-joinder or misjoinder of a person or persons did not defeat the cause of action particularly the jurisdiction of the lower court.

Order 23 Rule 3 of Area Court law of Kwara State 2006 empowered Area Court to strive to do substantial justice in all matters before it. It stipulates as follows:-

> "The court may at any stage strike the names of any parties improperly or unnecessarily joined, and may, after due notice given to the parties, affected, add the names of parties whose presence is essential to just decision of the matter in dispute."

This order has two components. The first leg directs the court to strike out the names of any party unnecessarily or improperly joined and the second leg stipulates that names of the parties whose presence is essential to just decision of the matter in dispute be joined.

This principle was applied in the case of Registered Trustees; C.A.C. Vs Sadiku (2002) FWLR (Pt 95) pages 238 and 247 paragraphs G – H. It was held that the court can suo-motu take the initiative of ensuring that a necessary party is joined in an action.

Therefore it is our view that non joinder of interested parties is not fatal to the suit before the trial court, because the law has empowered the trial court to strike out only the names of unnecessary parties and join the necessary parties.

We opined that striking out this suit based on letter of administration is tantamount to a denial of the right to fair hearing as enshrined under Section 36 of the Constitution of the Federal Republic of Nigeria 1999.

We therefore set aside the decision of the lower court and order a retrial in the same Upper Area Court I, Ilorin.

Appeal fails in part and succeeds in part.

SGD	**SGD**	**SGD**
S.M. ABDULBAKI	**I.A. HAROON**	**A.A. IDRIS**
KADI	KADI	KADI
SCA	SCA	SCA
17/02/2010	17/02/2010	17/02/2010

3) IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIA IN THE SHARIA COURT OF APPEAL OF ILORIN JUDICIAL DIVISION HOLDEN AT ILORIN ON 17TH FEBRUARY,2010 3RD RABIUL AWWAL 1431 A.H.

BEFORE THEIR LORDSHIP:

- **I.A HAROON - KADI, S.C.A**
- **A.A. IDRIS - KADI, S.C.A**
- **S.M ABDUL BAKI - KADI, S.C.A**

APPEAL NO. KWS/SCA/CV/AP/IL /13 /2008

BETWEEN:

- **AMUDALAT AKANKE - APPELLANT**

VS

- **JAMIU ALAO - RESPONDENT**

PRINCIPLES:

i. Mere speculation, assumption and conjuncture will not have a weight to stand before the law.
ii. A Muslim by the injunction of the Holly Qur'an has no option or choice of his own.
iii. A Judgment without enforcement is of no benefit.
iv. Power of appellate court to enforce judgment of trial court.

BOOKS/STATUTES REFERRED TO :

1) Muslimat Aderibigbe Vs Yekinni Aderibigbe (2000) SCA Annual Report p 38 at 48.
2) Rashidat Abeni Vs Wahab Ajani (2005) SCA Annual Report, page 19 at 126.
3) Halimat Yahya & ors Vs Husseni Nakodi (1998) SCA Annual Report, p. 173 at 180- 181.
4) Section 10 (2) Sharia Court of Appeal Law, Cap S. 4 Laws of Kwara. State 2006.

5) Section 61 Area Court Law Cap S.4 Laws of Kwara State.
6) The Glorious Qur'an (10: v 36)
7) The Glorious Qur'an (33: v 36)
8) Nazariyat Al-Hukmi Al-Qada'i Fi -Shariat na Al-Qanun, by Abdul Nasir Musa Abu Basal, p: 418.
9) Order 3 Rule 7 (2) (g&h) of the Sharia Court of Appeal Rules CAP S.4 Laws of Kwara State, 2006.

JUDGMENT: WRITTEN AND DELIVERED BY: I.A. HAROON

Jamiu Alao, the respondent before us was the plaintiff in Case No. 203/2000, he sued the appellant at the Area Court Grade 1 No 3, Adewole, Ilorin to seek for an order of the court to enforce/execute its judgment delivered on 8/1/2002, which was appealed against and confirmed by the Sharia Court of Appeal, Ilorin on 2/10/2002.

The motion papers before the trial court were supported by 8 paragraphs affidavit and later followed by other additional affidavits. Also annexed to the motion were exhibits A-3 i.e (i) the initial judgement of the trial court dated 8/1/2002, (ii) the judgment of the Sharia Court of Appeal by which the initial judgment was affirmed dated 2/10/2002, and (iii) the ruling of the Court of Appeal dated 3/3/2005 respectively.

At the trial court, where the case leading to this appeal was dragged for almost eight years, the counsel for and against argued their case, and on 7/8/2008 the trial court ruled on the enforcement of its previous judgement and ordered that the child in dispute be produced by the appellant to the court for onward handing over to the respondent within 30 days. The appellant was aggrieved by the verdict of the trial court and thus appealed to our court to seek for redress.

The appeal is grounded on only one ground of appeal, which reads thus:

> The learned trial court erred in law when he ordered that the respondent/judgment debtor should make the child in dispute available in court within 30days as the applicant/Judgment creditor has the right to choose where the child in dispute should stay whereas the claims before the court was not that of

custody but rather enforcement of judgment already delivered by the court.

Before us on the 3rd of February 2010, U.S, Imam Esq., appeared for the appellant while Y.K. Saadu Esq., accompanied by his friend T.A. Aluko Esq. represented the respondent.

Arguing the appeal, the counsel for the appellant stated that the appeal emanated from Area Court I No 3, Adewole, Ilorin against the ruling delivered on 7/8/2008. The learned counsel formulated one issue for determination of the appeal which read thus:

> Whether or not the trial court is right in its decision to have awarded or granted the respondent the relief, which did not constitute part of the claim before the court?

The learned counsel argued that the trial court has no jurisdiction to grant or award the relief not claimed by the respondent. He averred that in the instant case, the claim of the respondent is enforcement of the judgment of the trial court decided on 8/1/2002 and which was affirmed by the Sharia Court of Appeal on 2/10/2002. Supporting this, he referred to page 21(LL 24-28), and pp.28-30, and page 40 of the record of proceedings.

He stressed that the claim before the court was that of paternity, which is quite distinct from custody, **الحضانة** . He further argued that paternity is governed by different principles. He submitted that the trial court derailed by mixing custody with claim.

He stated that what his client is challenging is mainly the custody awarded to the respondent as reflected on page 26 (LL 39-44) of the record of proceedings. He called our attention to the ruling of the court, which reads (page 26 of the trial court record**):**

> The child in question must be produce (sic) before this court for onward handing over to the applicant who has the absolute right to determine where the child will live within 30 days**.**

He argued that the above quoted ruling had impliedly awarded the custody of the child in dispute to the appellant. He referred to the case of Muslimat Aderibigbe Vs. Dr. Yekini Aderibigbe, Sharia Court of Appeal, Ilorin Kwara State, Nigeria, (2000) Annual Report p. 38 at 48.

He urged us to hold that the trial court is devoid of jurisdiction to grant, award or hand over the child in dispute to the appellant.

He argued further that the trial court in its decision of 8/1/2002, had settled the issue of paternity of the child in dispute. He cited our earlier decision in the case of Rashidat Abeni Vs. Wahab Ajani, (2005) Annual Report, Sharia Court of Appeal, Ilorin, Kwara State page 119 at 126.

The learned counsel further submitted that by awarding the custody to the respondent, the trial court had denied the appellant opportunity of fair hearing. He argued that even where the custody is contested, the two parties are entitled to equal right of fair hearing. He stressed that granting custody to a party is not automatic. He referred us to the case of Halimat Yahya and Others Vs. Hussain Usman Nakodi, 1998 Annual Report, Sharia Court of Appeal, Ilorin, Kwara State **p.173 at 180-181** and to a well-known source of Islamic law; **Jawahiru-l-Iklil,** without citation.

In conclusion, the learned counsel prayed us to set aside the aspect of the custody in the appeal.

The learned counsel to the respondent in his response, formulated three issues for determination of the appeal:

1. Whether the appellant has a right to be heard on this appeal?

2. Whether or not the frolic journey embarked upon by the appellant from the time the judgment ought to be enforced to the present time is a deliberate action to frustrate the enjoyment of the judgment by the respondent?

3. Whether or not the appeal is competent?

Arguing the formulated issues, he submitted that the appellant has no right at all to be heard on this appeal. For the purpose of elucidation, the learned counsel referred us to

page 40 of the trial court record of proceedings, which contained the initial judgment on paternity of the child in dispute. It reads thus:

> The female child born on 8/7/2000 of deft. I and plaintiff is hereby awarded to plaintiff as his daughter (sic). The plaintiff must give the daughter a beautiful name within 3 days. Deft. I must make the child available for naming her immediately by the plaintiff.

He submitted that the above judgment of the trial court was dissatisfied with by the appellant and thus appealed against same to the Sharia Court of Appeal, but lost as the judgment was affirmed. The appellant later sought for a redress from the Court of Appeal against the decision of the Sharia Court of Appeal and also failed.

He submitted that, had it been that the appellant is sincere and did not want to deny the respondent the fruit of the judgment there will be no need for filing a motion for enforcement and even this appeal. He canvassed that the legitimate order of the court, which ought to have been carried out, was neglected by the appellant. They have no legal right to come to this court again, he submitted.

He submitted that no system of law, whether Sharia or English, will allow a person who had denied a court order to come for protection before the same court. He told us that the appellant had violated the court order, because the child in dispute had not been made available to the respondent or given a name till today as ordered by the trial court in the initial judgment.

The learned counsel lamented that motions, preliminary objections and purported right of appeal embarked upon by the appellant both at the lower court and Courts of Appeal were calculated attempts to frustrate the respondent and deny him the enjoyment of the said judgment since year 2002 till date. He therefore posed a question thus:

> Who suppose (sic) to carry out the naming of the child in question other than the respondent?

The answer is that, the only legal father of the child in dispute by the existing court judgment is the respondent. We are now in 2010, eight years passed. The child is yet to be named by the respondent or made available to him as directed by the courts!

The learned counsel submitted that the court did not misdirect itself or derail in the order it gave. However, the language may be superfluous, it had conveyed the same issue. In case there is a quarrel with the language, this, according to learned counsel, had been settled by the Section 61 Cap S.4 of the Area Courts Laws of Kwara State.

He finally submitted that by Section 10 (2) of the Sharia Court of Appeal Law, Cap S.4 Laws of Kwara State of Nigeria 2006, the Sharia Court of Appeal has all the power, which the area courts have where such power is not utilized. He prayed us to grant the enforcement and dismiss the appeal, as it is frivolous and irritating and to award a substantial cost.

U.S. Imam Esq., the appellant's counsel, in his reply submitted that an appeal is determined by the record of proceedings before it. He stated that all the submissions of the learned counsel to the respondent were based on sentiments without a single authority cited. He averred that it is not allowed in the Court of Appeal and Supreme Court that a respondent should formulate more than one issue on a ground of appeal. He therefore sought to known the position of Sharia on this. He reiterated that all the appellant is challenging is that the court had granted and awarded what was never asked for before it. He also submitted that the section of the Area Court law cited is not relevant to the instant appeal. He said the respondent had not challenged his case, he therefore urged us to discountenance all the submissions of the respondent counsel and to allow the appeal.

On our part, we carefully and painstakingly perused the court processes on this matter, the record of proceedings, exhibits and annextures. We also patiently listened to the counsel to the parties. It is our candid opinion that the main issue in the appeal is centered on two major areas:

i. Whether the trial court actually misdirected itself and granted or awarded a relief that was never placed before the court i.e. custody?

ii. Whether the respondent to whom the paternity of the child in dispute was awarded had actualized the judgment?

On the first issue raised above, we quite agreed with the learned counsel to the respondent that though the language of the trial judge in his judgment of 7/8/2009 may be superfluous, it had conveyed the same issue which is the subject matter of this appeal and that is the paternity of the child in question. Thus the trial judge had neither misdirected himself nor derailed. We so hold. We equally shared the same view with the learned counsel on relevance of the Section 61 of the Area Courts Law, CAP S.4 Laws of Kwara State of Nigeria, which emphasized that matter shall be decided according to substantial justice without undue regard to technicalities.

It is equally important to point out that throughout the proceedings of the trial court on this matter, there is no where the issue of custody of the child in dispute was raised or mentioned, either by the learned counsel or the trial judge.

For the purpose of clarity and for the avoidance of doubt from any doubting Thomas we hereby quote the order of the trail court thus:

> **ORDER**: the child in question must be produced before the trial court for onward handing over to the applicant who has the absolute right to determine where the child will live within 30days.
>
> (P.26 of Trial Court Record of Proceedings).

The quoted order of the trial court according to the learned counsel to the appellant had expressly or impliedly transferred the custody of the child in dispute to the respondent. Our stand on this is that paternity is clearly distinct from the custody; each of them is separately treated under the golden rule of Islamic procedural law of *an-Nasab and al-Hadanat.*

There is no mix up between them.

We took the judicial notice that the order pronounced by the trial court which led to the instant appeal as quoted above, did not differ from the one it gave in 8/1/2002 except in the number of days and perhaps the phrase “who has the absolute right to determine where the child will live”. Here goes the order of the initial judgment:

> ORDER: the female child born on 8/7/2000 of defendant I and plaintiff is hereby awarded to plaintiff as his daughter. The plaintiff must give the daughter a beautiful name within 3 days. Deft. I must make the child available for naming her immediately by plaintiff (sic).
>
> (Record of proceedings. P.40)

The above order of the trial court dated 8/1/2002, was appealed against but confirmed by our court in its judgment dated 2/10/2002.

It is our well-considered view that the issue of custody was never postulated nor decided in the order of the trial court in its decision of 7/8/2008. The argument and submission of the learned counsel to the appellant on this issue is misleading, mere assertion and assumption.

According to our law, it is trite that mere speculation, assumption and conjuncture will not have a weight to stand before the truth.

> **…**Certainly, conjecture (assumption, guess) Can be of no avail against the truth...(Qur’an 10:36)

(إِنَّ الظَّنَّ لاَ يُغْنِي مِنَ الْحَقِّ شَيْئاً) يونس : **36**

since 8/1/2002 when the initial judgment was given, and the same was confirmed by the Sharia Court of Appeal, Ilorin, the respondent had not derived any benefit from the judgment. The child in dispute had not been made available to the respondent nor had he been given the opportunity to name the child as was ordered by the trial court. This is a serious violation of the court order by the appellant.

To say the least, this is very unethical, uncivilized and indeed unislamic. A muslim who believes in God is by the injunction of the Qur'an compelled that he should not have option or choice of his own where Allah decrees, the verse reads thus:

(وَمَا كَانَ لِمُؤْمِنٍ وَلاَ مُؤْمِنَةٍ إِذَا قَضَى اللهُ وَرَسُولُهُ أَمْراً أَن يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ وَمَن يَعْصِ اللهَ وَرَسُلَهُ فَقَدْ ضَلاَلاً مُّبِيناً) الأحزاب : 36

It is not for a believer, man or woman, when Allah and His messenger have decreed a matter that they should have any option in their decision. And whoever disobeys Allah and his messenger he had indeed strayed into a plain error. (Qur'an 33: 36).

The cited cases by the appellant counsel are not helpful as the circumstances are quite different from the instant appeal. We are of strong opinion that the three issues formulated by the counsel to the respondent for determination are all within the context of the only ground of this appeal.

In a situation such as the instant appeal where a party willingly violated the court orders/judgments not minding the delay and denial of justice to the right of other party, the court shall have no option than to enforce such judgment upon the erring party, herein the appellant, and we so hold.

Islamic law in its golden rule is abundant with provisions on enforcement of judgment, either by the court or through the Law Enforcement Agents. One of such authority goes thus:

... هو الهدف الأساسي للحكم القضائي، وبمقتضاه تعود الحقوق إلى أصحابها، وتحقيق العدالة بترجمة الحكم الشرعي إلى واقع يعاش. فإذا لم يقبل التنفيذ فإنه يعتبر فاقداً لقيمته، وفي ذلك قول سيدنا عمر بن الخطاب (رضي الله عنه) في رسالته إلى أبي موسى الأشعري: " فإنه لاينفع تكلم

Enforcement is the main objective of the court orders judgments and decisions, by which parties get their rights and natural justices are metamorphosed into a practical and eventful life. A judgment without an

enforcement is of no benefit. This position is entrenched by the second Caliph Umar bn al-Khattab in his letter to Abu Musa al-Ash'ariy, thus: "judgement (made on claims) where there is no enforcement is of no benefit". (See Nazariyyat al-Hakum al-Qada'I Fi ash-Shari'ah Wa al-Qanun, by Abdul Nasir Musa Abul Basal, p.418).

بحق لا نفاذ له" . (نظرية الحكم القضائي في الشريعة والقانون لعبد الناصر موسى أبو البصل ، ص 417 " .

The same authority went further to say:

Enforcement herein connotes acting of a party affected by the context of the judgment which becomes binding on him to avoid unnecessary delay of peoples right……..Such enforcement may either be effected by the court or by the law enforcement agent in case the affected party refuses to obey the court voluntarily.

ومعنى النفاذ هنا العمل بنتيجة الحكم والتنفيذ بمضمونه؛ لئلا تتعطل مصالح الناس .

وتنفيذ الحكم قد يتم في نفس المجلس الذي صدر الحكم فيه إذا كان المحكوم به حاضراً في المجلس. كما قد يفوض التنفيذ للسلطة التنفيذية بواسطة قوة الشرطة إذا رفض المحكوم عليه تنفيذ الحكم طواعية واختياراً .

From the totality of all the foregone pertaining to the trial court decision of 1/8/2002, on the paternity of the child in dispute, we hereby invoke our law as stipulated in Section 10(2) of the Sharia Court of Appeal Law, Cap S.4 Laws of Kwara State of Nigeria, 2006 which reads thus:

For all the purposes of and incidental to the hearing and determination of any appeal, and the amendment, execution and enforcement of any judgment, order or decision made therein, the court shall have all the powers, authority and jurisdiction of every area court of which the judgment, order or decision is the subject of an appeal to the Court, and without prejudice to the generality of the foregoing, shall have all the powers

conferred upon area courts exercising appellate jurisdiction under any area Courts Law.

And also Order 3 Rule 7(2)(g & h) of the Sharia Court of Appeal Rules CAP S.4 Laws of Kwara State of Nigeria 2006 which reads thus:

> The court shall not normally re-hear or re-try the case but if it shall be necessary for the purpose of elucidating or amplifying the record of the court below and arriving at the true facts of the case the Court may re-hear or re-try the case in whole or in part and may:-
>
> (g) Do or order to be done anything which the court below has power to do or order; and
>
> (h) Generally exercise any of the powers conferred upon it by section 10 of the Law.

In the light of the above, we hereby order the appellant to produce the child in dispute and make same available to our court registry within two weeks from today 17th February 2010 for proper affiliation to the legal father. However, the custody of the child in question shall become an issue when the due processes are followed.

Appeal fails.

SGD	**SGD**	**SGD**
S.M. ABDULBAKI	**I.A. HAROON**	**A.A.IDRIS**
KADI	**KADI**	**KADI**
17/02/2010	**17/02/2010**	**7/02/2010**

IN THE SHARIAH COURT OF APPEAL OF KWARA STATE OF NIGERIA
IN THE SHARIAH COURT OF APPEAL OF LAFIAGI JUDICIAL DIVISION
HOLDEN AT SHARE ON TUESDAY 23RD FEBRUARY, 2010
[8TH RABIUL AWWAL 1431 A.H.]

BEFORE THEIR LORDSHIPS:

I.A. HAROON	-	HON. KADI	SCA
S.O. MUHAMMAD	-	HON. KADI	SCA
A.A. IDRIS	-	HON. KADI	SCA

MOTION NO. KWS/SCA/CV/M/LF/01/2010

BETWEEN:

NDAFOGI ABUBAKAR - APPELLANT
VS
FATIMA NDAFOGI ABUBAKAR - RESPONDENT

PRINCIPLE:

The Court closes the gates of litigations, except for matter relating to murder, detention, emancipation, paternity and divorce.

BOOKS/STATUTES REFEREED TO:

1. Qur'an chapter 29 verse 16.
2. Order 4 Rule 3 (b) Sharia Court of Appeal Rules, Laws of Kwara State 2006
3. Order 9 Rule 1 Cap S4 of the Sharia Court of Appeal, 2006 laws of Kwara State.
4. Mukhtasar Khalil, Vol…. page 296.

RULING: WRITTEN AND DELIVERED BY A.A. IDRIS

Ndafogi Abubakar, the applicant filed the instant application with Fatimat Ndafogi Abubakar as the respondent. The latter sued the former in a divorce suit at the Area Court I Shonga.

This motion was filed on the 11th day of January, 2010. It prayed this Honourable Court for an enlargement of time within which the applicant can appeal against the decision of Area Court I Shonga delivered on the 20th October, 2009. He further prayed for such further order or orders as the honourable court may deem fit to make in the circumstance (sic)

The applicant among other things filed eleven paragraph affidavit in support with the proposed notice and grounds of Appeal annexed thereto as exhibit A. And the respondent did not file any counter affidavit.

The application, which was brought by way of motion on notice, came up for hearing before this honourable court on the 23rd February, 2010. Parties were in court and were self represented.

The applicant apologized for his inability to file his appeal within the statutorily prescribed period. He attributed his lateness to his ill health as a result of which he was taken to a traditional medicine home where he received treatment. He further said that it was after his recovery that he came and filed this instant application. He then urged this court to consider the foregoing reasons and for allowing him to appeal against the decision of the trial court. He further stated that he was ready to file his appeal if the extension would be granted.

The respondent opposed the application arguing that there was nothing wrong with the applicant health-wise since the dissolution of their marriage. She finally urged the court not to grant the request of the applicant.

In his reply, the applicant said that if not because of his ill health he would not have appealed out of time and went further to say that he observed no wisdom in telling lies and prayed this court to grant his motion for enlargement of time to appeal.

Having listened to both sides and carefully considered the application as a whole, we are of the opinion that the issue for the determination in this motion is whether the applicant has satisfied the preconditions stipulated in the rules of this court and in the given circumstances of this application or not.

This is because, it is not a blank cheque that every application for extension of time must be granted. Its granting is designed to meet the ends of justice.

In the case at hand, there has been some delay of (52) fifty-two days, but the cause for it has been well explained by the applicant. Thus the principles upon which a court can grant enlargement of time in which to file an appeal are well settled being a matter of discretion of the court. It is trite that in the exercise of discretionary power, a court must be guided by the principle of fairness and the powers must be exercised judicially and judiciously.

The rules of this court enumerated the conditions to be satisfied by an applicant before he can succeed in his application. See Order 4 Rule 3 1(a) and (b) of the Sharia Court of Appeal Rules which stipulates thus:- Every application for enlargement of time shall be supported by:-

a) An affidavit or affirmation or declaration having in law the effect of an oath setting forth good and substantial reasons for the application; and

b) Grounds of appeal which prima facie shall give cause for leave to be granted.

This goes to show it is trite that an applicant for an extension of time within which to appeal must reflect reasonable and substantial reasons for failure to appeal within the statutorily prescribed period. Furthermore, the proposed grounds of appeal must also show prima-facie good cause why the appeal should be heard.

In this case, the affidavit in support of the application shows that the delay was due to ill health of the applicant. We observed that the sickness of the applicant is the primary cause for the delay of the appeal and therefore should not be made to suffer for his sickness which was caused by circumstances beyond his control.

(See Quran 29, Verse 17).

Nor does the blame attached to the sick……" (وَلاَ عَلَى الأَعْرَجِ حَرَجٌ وَلاَ عَلَى الْمَرِيضِ حَرَجٌ)

سورة الفتح آية **17**

The second hurdle to be cleared by the applicant to satisfy the provision of Order 4 Rule 3 (b) Kwara State Sharia Court of Appeal Rules stated as follows:-

> "Grounds of Appeal which prima facie shall give cause for leave to be granted".

For the purpose of clarity we hereby reproduce two proposed grounds of appeal to show why the request should be granted Grounds (I)

That the trial court hastely granted the divorce to my wife in my absent against my wish (sic).

Ground (3)

> That the trial court did not give me opportunity to defend my self, (sic).

It is our view that these two grounds cited out of the four grounds of the applicant have shown prima-facie good cause why the request of the applicant should be granted and heard. More so, Order 9 Rule 1 Sharia Court of Appeal Rules, Cap S.4 2006 Laws of Kwara State stipulates thus.

> "The court may in its discretion make any order within its powers and jurisdiction which it considers necessary for doing justice……. "

We observed that the applicant has shown good cause why the request should be granted. More so, in Islamic law the issue of marriage, divorce, and paternity cannot be dismissed with a wave of the hand, especially where the grounds therein showing good substantial reason as shown by grounds two and three respectively. (See Mukhtasar Khalili, Vol…. Page 296)

> *The court closes the gates of litigations, except that of murder detention, emancipation, paternity and divorce.*

ويعجزه إلا في دم وحبس وعتق ونسب وطلاق.
راجع مختصر خليل , ص 296.

We opined that having satisfied the provisions provided by Order 4 Rule 3 of the rule of this court, the applicant is entitled to have the discretion of this honourable court exercised in his favour.

We accordingly find and hold that the applicant has satisfied the preconditions stipulated in the rules of this court and in the given circumstances of this application.

Enlargement of time is accordingly granted thereby extending time for a period of 14 days from today, within which the applicant is to file his notice and grounds of appeal.

Application succeeds.

SGD	SGD	SGD
A.A. IDRIS	**I.A. HAROON**	**S.O. MUHAMMAD**
KADI	KADI	KADI
SCA	SCA	SCA

23/02/2010	23/02/2010	23/02/2010

IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIA.
IN THE SHARIA COURT OF APPEAL OF LIFIAGIN JUDICIAL DIVISION
HOLDEN AT SHARE ON TUESDAY 23RD FEBRUARY, 2010.
9th RABIUL AWWAL 1431 A.H.

BEFORE THEIR LORDSHIPS:

I. A. HAROON	**-**	**HON. GRAND KADI**	**SCA**
S. O. MUHAMMAD	**-**	**HON. KADI**	**SCA**
A.A.IDRIS	**-**	**HON. KADI**	**SCA**

APPEAL NO KWS/SCA/CV/AP/LF/06/2009

BETWEEN:-

SALAMATU BUKE - APPELLANT
VS
TAOHEED MUSA - RESPONDENT

PRINCIPLE:

The plaintiff is he whose silence put an end to the litigation as the appellant herein sought for the withdrawal of the appeal as the matter had been amicably settled between the parties concerned.

RULING: WRITTEN AND DEVLIERRED BY I.A. HAROON

The appellant, Salamatu Buke sued the respondent, Tauheed Musa at the Area Court 1, Bacita in suit No. 50/2009 Case No. 27/2009 to claim the custody of a male child being the product of this marriage. The trial court having heard the matter granted the paternity of the child in question to the respondent and ignored the aspect of the custody. The appellant was not satisfied with the decision of the trial court and thus appealed to our court for a redress.

On the 23/02/2010 when the case was called for mention before us, none of the two parties appeared in the court.

However, a letter dated 10/10/2009 and thumb printed by the respondent was tendered before the court. The appellant therein sought for the withdrawal of the appeal as the matter had been amicably settled between the parties concerned. The appeal was in the light of this development struck out in line with our law that:

The plaintiff is he whose silence puts an end to his litigation.
Al-fawakihu Diwani page 220
Appeal struck out.

المدعي هو الذي لو سكت لترك على سكوته. " فواكه الديواني ص 220"

SGD	**SGD**	**SGD**
A.A. IDRIS	**I.A. HAROON**	**S.O. MUHAMMAD**
KADI	**KADI**	**KADI**
23/02/201O	**23/02/2010**	**23/02/2010**

IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIA , IN THE SHARIA COURT OF APPEAL OF ILORIN JUDICIAL DIVISION HOLDEN AT ILORIN ON THURSDAY 4TH DAY OF MARCH, 2010/ 18TH RABIUL- AWWAL 1431 A.H.

BEFORE THEIR LORDSHIPS:-

A.K. IMAM FULANI	**-**	**GRAND KADI, S.C.A**
A.K. ABDULLAHI	**-**	**KADI, S.C.A**
S.M. ABDULBAKI	**-**	**KADI, S.C.A.**

MOTION NO. KWS/SCA/CV/M/IL/01/2010.

BETWEEN

JIMOH ABANISE	**-**	**APPLICANT**
VS		
FALILAT AJADI	**-**	**RESPONDENT**

PRINCIPLE:

An application would be considered if all the needed requirements of validity are present.

BOOKS/TES REFERRED TO:

(1). Order IV Rule 3 (1) (a) (b) of the Sharia Court of Appeal Rules Cap. S 4 Laws of Kwara State of Nigeria 2006.

(2). Order IV Rule III (2) of Sharia Court of Appeal Rules.

RULING: WRITTEN AND DELIVERED BY S.M. ABDULBAKI.

The applicant, Jimoh Abanise by way of Motion on Notice filed this application with Falilat Ajadi as the respondent. O.Y. Gobir Esq. appeared for the applicant while Yusuf Y.F. Zubair Esq. with Arikewuyo S.T. Esq. (Miss) appeared for the respondent.

The application which was dated and filed on 8th January 2010 was brought pursuant to Order IV Rule 3 (2) of the Sharia Court of Appeal Rules. It prayed for the following orders:

1. An order of the honourable court enlarging time within which the defendant/applicant shall file and serve his Notice of Appeal.
2. And for such order or further Orders as this

honourable court may deem fit to make in this circumstance.

In furtherance thereto the grounds upon which the prayers are sought are as follows:-

GROUNDS FOR THE APPLICATION

(a) The trial court delivered its judgment on the 15th day of October, 2009 with an Order for the dissatisfaction (sic) party to appeal to Sharia Court of Appeal, Ilorin within 30 days.

(b) The 30 days required for the filing of notice of appeal was expected to lapse on the 15th day of November, 2009.

(c) The applicant was still within time when on the 9th day of November, 2009 the Judicial Staff Association of Nigeria embarked on Nationwide strike, Kwara State inclusive.

(d) The above described strike was called off on the 30th day of December, 2009 and by this time, the time within which the applicant could have filed his notice of appeal had expired.

This application was supported with fifteen (15) paragraph affidavit deposed to by the applicant himself. Attached to the affidavit is a document marked as exhibit, JAI and headed Notice of Appeal.

In moving the motion, the learned counsel to the applicant, informed the court that the Motion on Notice was dated and filed on 8th January, 2010 and was brought pursuant to Order IV Rule III (2) of this honourable court rules. That the motion is praying for the enlargement of time with - in which the applicant can file and serve Notice and Ground of Appeal and for such further and orders as this honourable court may deem fit to make in the circumstances. That the application contains the grounds for the application and supported with fifteen paragraph affidavit deposed to by the applicant himself. That a document marked as exhibit JAI was attached to the affidavit. He submitted that exhibit JAI is the proposed notice of appeal. He then sought reliance on all the paragraphs of the affidavit particularly paragraphs 3 to 14

thereof off and the exhibit. He moved in terms of the motion paper.

Opposing the application, the counsel to the respondent, Yusuf Y.F. Zubair, Esq. submitted that he was opposing the application on point of law. He said that the document attached to the applicant's affidavit marked as exhibit JAI is titled, notice of appeal and that there has not been any Notice of Appeal before this court. He submitted further that a Notice of Appeal can only come into existence in this case after the application filed before this court has been granted allowing extension of time to file Notice of Appeal. He then urged this court to disregard the said attached exhibit JAI and to regard the application as one filed without any exhibit. He argued further that the only document the law requires to accompany this type of application is a proposed Notice of Appeal and the exhibit JAI attached by the applicant without the word, `proposed' is improper. He therefore urged this court to strike out this application.

Responding to the submission of the counsel to the respondent, O.Y. Gobir, Esq. urged us to discountenance with the submission of the learned counsel to the respondent saying that it amounts to technicality which the court will not allow to stand on the way of justice. He argued that there is no law requiring that it is the proposed notice of appeal to be filed with affidavit. Because this type of application can be presented and granted without attaching any notice of appeal as such notice of appeal can be filed after the order granting extension of time has been made.

We have listened carefully to the submission of the counsel to both parties. We have also gone through the motion, the affidavit in support and the exhibit attached. We say that two preconditions which the court is enjoined to consider in the application of this nature are (1) good and substantial reason for delay or failure to appeal within time and (2) prima-facie arguable grounds of appeal which show good cause while the leave must be granted. See Order IV Rule 3 (1) (a) (b) of the Sharia Court of Appeal Rules Cap S4.Laws of Kwara State of Nigeria, 2006. It provides as follows:-

Method of application for Enlargement

1) Every application for enlargement of time shall be supported by:-
   (a) An affidavit or affirmation or declaration having in law the effect of an Oath setting forth good and substantial reasons for the application; and
   (b) Grounds of appeal which prima-facie shall give cause for leave to be granted.

Going by the requirement of the law, we consider that the reason for failure to file Notice of Appeal in time as stated in the affidavit that is, the strike action embarked upon by the Staff of judiciary in Kwara State is enough a good and substantial one for that matter.

On the second requirement, that is, prima-facie arguable grounds of appeal which show good cause for leave to be granted, we note from exhibit JAI that the question of divorce granted on doubtful evidence is an arguable grounds raising issue of the standard of proof needed in the type of divorce involved in the case. However, this exhibit JAI was opposed to by the learned counsel to the respondent and submitted that it runs foul of the law since it is not titled, Proposed Notice of Appeal but a Notice of Appeal and as such it is not a proper document and we must discountenance with the document. On this we have taken a careful consideration of the law relevant to this application and found that the law is silent on the title of the document to be attached to the affidavit in this type of application. It is our view that it is not the law that exhibit JAI should be titled Proposed Notice of Appeal. We note, however, that it has been the established practice in our courts to name this type of document as Proposed Notice of Appeal. The question is, where as in the instant case, the document is not headed Proposed Notice of Appeal shall be viewed as serious infraction necessitating striking out of this application. The answer to this question shall be in the negative. This is so because we have pointed out that it is not the requirement of the law that the document shall be titled Proposed Notice of Appeal. Consequently, we hold that in the interest of justice the document i.e. exhibit JAI is acceptable and shall be considered in this application.

Following from the foregone, we hold that this application met the two requirements of the law stated above. We hold that the reasons adduced for the delay to file this Notice of Appeal is substantial. Similarly, the grounds stated in exhibit JAI show prima-facie arguable grounds. The application is meritorious and it is hereby granted. The objection is overruled.

The applicant is granted seven (7) days within which to file his notice of appeal.

Application succeeds.

SGD	SGD	SGD
S.M. ABDULBAKI KADI	**A.K. IMAM FULANI KADI**	**A. A. BDULLAHI KADI**
04/03/2010	**04/03/2010**	**01/03/2010**

IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIA. IN THE SHARIA COURT OF APPEAL OF ILORIN JUDICIAL DIVISION. HOLDEN AT ILORIN ON WEDNESDAY, 31ST MARCH, 2010. 16TH RABIUL -THANNI 1431 A.H

BEFORE THEIR LOARDSHIPS :

I. A. HAROON	**-**	**HON. KADI**	**SCA**
S. O. MUHAMMAD	**-**	**HON. KADI**	**SCA**
A. A. IDRIS	**-**	**HON. KADI**	**SCA**

MOTION NO.KWS/SCA/CV/M/IL/07/2010

BETWEEN:-

ALHAJI ISSA ALABI - APPLICANT

VS

1. **MALLAM MUHAMMED ALABI**
2. **OSENI ALABI** } **-RESPONDENTS**
3. **ALHAJI SALIHU KAREEM**

PRINCIPLE:

An application is considered when the court sees merit in it .

RULING: WRITTEN AND DEVLIERED BY I.A. HAROON

Chief D. O. Bello Esq., with his learned friend Ajetumobi B. Mukaila appeared for the applicant while Lanre Yahaya Esq., appeared for Muhammed Alabi, the 1st respondent, S. M. H. Kosemani appeared for Oseni Alabi the 2nd respondent and H. O. Bukhari appeared for Alhaji Salihu Kareem, the 3rd respondent.

The application for an extension of time which to appeal to our court was dated 16/03/2010 and filed 17/03/2010. It seeks for our leave for an extension of time to appeal against the ruling of Upper Area Court 1, Ilorin in Case No. UAC1/CV/FM/47/2008. It was supported by a 15- paragraph affidavit. No counter affidavit or objection from the respondent's counsels.

Having considered the merit of the application and the fact that the matter involved is inheritance, the application was granted. The applicant should file the notice and ground(s) of appeal within 14 days.

Application succeeds

SGD	**SGD**	**SGD**
A. A. IDRIS	**I. A. HAROON**	**S. O. UHAMMAD**
HON. KADI	**HON. KADI**	**HON. KADI**
31/03/2010	**31/03/2010**	**31/03/2010**

IN THE SHARIAH COURT OF APPEAL OF KWARA STATE OF NIGERIA, IN THE SHARIAH COURT OF APPEAL OF LAFIAGI JUDICIAL DIVISION HOLDEN AT SHARE ON WEDNESDAY, DAY OF 7TH APRIL, 2010. 23RD JUMADA- AWWAL 1431 A.H

BEFORE THEIR LORDSHIPS:

I.A. HAROON	**-**	**HON. KADI SCA**
S.O. MUHAMMAD	**-**	**HON. KADI SCA**
A.A. IDRIS	**-**	**HON. KADI SCA**

APPEAL NO KWS/SCA/CV/AP/LF/02/2010

BETWEEN:

NDACHE KOLO	**-**	**APPELLANT**
AND		
AMINAT NDACHE KOLO	**-**	**RESPONDENT**

PRINCIPLES:

i) The onus of proof rests on the plaintiff.
ii) A husband who fails to maintain his wife shall be ordered to release her after giving him time, except if the wife is aware before the contract that he was poor and incapable to feed her.

BOOKS/STATUTES REFERRED TO:

i) Order 9 Rule 3 Area Court Civil Procedure Rules, Cap A9 Laws of Kwara State, 2006.
ii) Tuhfat Al-Hukkam: Translation and Commentary by Abbas Abdullahi Machika
iii) Al-Fiqh Al-Maliki Fi Thawbihi Al-Jadid; Vol. 3, p.623
iv) Kifayat At-Talib Ar-Rabbaniy in Hashiyat Al-Adawiy; Vol. II, p. 122.

JUDGMENT: WRITTEN AND DELIVERED BY I. A. HAROON

The respondent, **Aminat Ndache Kolo** sued the appellant, **Ndache Kolo** for the dissolution of their marriage at the Area Court Grade I, Tsaragi in Suit No. 132/2009, Case No. 127/2009.

On the 22nd December, 2009 when the matter was called for mention, only the respondent appeared in the court. The appellant, who was served personally according to the bailiff was absent without any reason or representation. The copy of summons dated 17/12/2009 was tendered at the trial court and was marked as **Exhibit A**.

The trial judge asked the complainant why she was in court. She told the court that she wanted to seek for dissolution of the existing marriage between her and the appellant because of maltreatment i.e. lack of feeding and frequent beating.

The trial judge invoked Order 9 Rule 3 of Area Court Civil Procedure Rules CAP A9 Laws of Kwara State 2006 and granted the divorce in the absence of the appellant. The appellant who was aggrieved with the decision of the trial court therefore appealed to our court to seek for a redress.

On the 23rd March, 2010 the two parties involved in the matter appeared before us. The appellant told us that he was sued by the respondent for dissolution of their marriage. That he actually went to the court on the day stipulated in the summons but the door to the court was under lock. He said that he was there together with his brothers-in-law, no name was given. He stated that three days later, the respondent came and told him that she had been granted divorce by the trial court. He said that he had no further knowledge of how the court granted the divorce as he was never served with the court processes apart from the first summon received by him. He said the judgment lack fair hearing and that the trial judge was not learned in Islamic law. He lamented that had it been that the trial judge was learned in sharia, he would not have granted the divorce in his absence. He said that an Islamic judge would be God-fearing. He told us that he still loved his wife, the respondent and he wanted her back to his house.

The respondent in her brief response reiterated that she sued the appellant because of lack of feeding and frequent beating. She told us that she had eight issues for the appellant but none was alive. That the appellant was served by substituted service through his village head, and that she was no longer in love with the appellant. She prayed us to affirm the decision of the trial Court. The appellant, in his reply said he disagreed with the respondent's claim that it was never true that he frequently beat or starved her of food.

Having listened to the two parties involved in this matter and perused a one-page trial court proceedings, it was our well-considered view that the matter before us was purely issue of maltreatment, otherwise known in our law as **Ad-Darar, "الضرر"** "maltreatment or cruelty.

By the provision of sharia in its golden procedural rules, **Darar**, maltreatment is quite distinct from Khulc dissolution sought by a wife purely on lack of love which if granted the wife will have to pay a ransom to compensate the husband. Whereas divorce by maltreatment attracts no compensation or refund of dowry.

It is unprocedural to grant dissolution of marriage on an allegation of maltreatment made by the wife without proof. There must be proof to establish the allegation. This proof in the instant appeal rests on the shoulder of the respondent because she is the **Muda[c] i**, "**المدّعي**", by the principle of our law, which says:

البيّنة على المدّعـــي.

Onus of proof rests on the plaintiff /

complainant**.**

Order 9 Rule 3 of Area Court Civil Procedure Rules CAP A9 Laws of Kwara State 2006 upon which the trial court rested its decision is not applicable here, because of the nature of the complaint. There is no way a case of maltreatment could be fairly heard and determined without evidence. It is trite that the court is not father christmas where one goes to make allegations and have his prayers granted without proof. The prophet in his noble tradition had long ago settled this when he said:

لو يعطى النّاس بدعواهم لادّعي الناس أموال قوم ودمائهم ، ولكن البيّنة على المدّعي واليمين على من أنكر .....

(الحديث الشريف).

If all the claims of people are granted, some people will lay claim to the lives and properties of others.

However, the onus of proof rests on the plaintiff and the oath of denial will be on the defendant…Prophetic tradition.

It is the assumption of law that the husband should maintain and love his wife. Anything contrary to this as alleged by the wife must be established by proof. This opinion of ours is echoed by the provision of Tuhfatul Hukkam "Guide to Advocates: A Translation and Commentary on Tuhfatul Hukkam" by Abbas Abdullahi Machika, which goes thus:

فالمدّعي من قـوله : مجرد ... من أصل أو عرف بصدق يشهد

The plaintiff is the person, whose statement runs counter to the original state of affairs or custom that will prove the truthfulness of his claim.

Where the above law is strictly applied, it becomes evident that under Islamic law, a wife who prays the court to grant her divorce from her husband based on maltreatment or cruelty, must prove same by calling two or more unimpeachable witnesses, and anything other than this is null and void and we so hold. This is

provided for in **al-Fiqh al-Malikiyyi fi Thaobihi al-Jadid, Vol. 3, p. 623.** It reads:

Procedure of proving cruelty are two:

طريق إثبات الضرر:

(i) Evidence of proof: evidence of not less than two male competent witnesses. Evidence of a man with two women or a man with oath will not be acceptable.

الأول : البيّنة ... شهادة عدلين فأكثر، ولابد أن يكون رجلين ، فلا تصح شهادة رجل وامرأتين ولا واحد مع اليمين.

(ii) A notorious information which is known among women, house maids and others in the neighborhood that X husband do maltreat his wife by beating, unnecessarily abusing, starving, turning away from her in bed, refusing talking to her or causing her hardships.

الثاني : السماع الفاشي المستفيض على ألسنة الجيران من النساء، والخدم وغيرهم ، بأنّ فلانا يضرب زوجته فلانة بضرب أو شتم في غير حق ، أو تجويع أو تحويل وجهه عند فراشه، أو عدم كلام ، أو ما يعد إضرار بها...

In the instant appeal none of the two procedures was adopted by the trial Court. Thus the decision is built on nothing and is bound to fail and we so hold.

The same authority enumerated conditions by which a wife can complain maltreatment against her husband at page 623, it reads:

A wife may lay a condition before the marriage contract that she shall not be maltreated and she may not.

وقد تشترط الزوجة عدم الإضرار بها في العقد، وقد لا تشترط ذلك .

By the above provision, a wife who made it a condition before the wedlock that she shall not be maltreated by the husband can seek for dissolution of her marriage where such condition is violated. However, where there is no such condition, the husband will be cautioned by the court and if the cruelty persists, then the marriage may be terminated after the cruelty has been established against the husband. Similarly, the wife who is aware of the poor condition of her husband before marriage cannot use same against him as a basis for dissolution of her marriage. See the same source quoted above, page 623.

The trial judge did not only derail by determining the matter in haste without any proof but also failed by not granting the appellant the opportunity to defend himself against the allegation. This is a blatant violation of the provision of our law as enumerated in **Kifayat At-Talib Ar-Rabbaniy in Hashiyat Al-'Adawiy Volume II, page 122** as thus:

A husband who fails to maintain his wife shall be ordered to release her after giving him time (talawwum) except if the wife was aware before the contract that he was poor and incapable to feed her.

وتطلق عليه بعد التلوم بالعجز عنها إلاّ أن تكون زوجته عالمة بفقره وعجزه.

راجع حاشية العدوي على شرح كفاية الطالب الرباني ج2، ص122.

In the light of the foregone, we hereby declare the decision of the Area Court Grade I, Tsaragi, of 23/02/2010 null and void. We order that the matter be retried under the principle of al-Darar (maltreatment) de novo at Upper Area Court II, Lafiagi by accelerated hearing.

Appeal succeeds.

SGD	**SGD**	**SGD**
A.A. IDRIS	**I.A. HAROON**	**S.O. UHAMMAD**
HON. KADI,	**HON. KADI**	**HON. KADI,**
07/04/2010.	**07/04/2010.**	**07/04/2010.**

IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIA, IN THE SHARIA COURT OF APPEAL OF LAFIAGI JUDIIAL DIVISION, HOLDEN AT SHARE ON WEDNESDAY, 7TH DAY OF APRIL, 2010 23rd JUMADA –AWWAL 1431 A.H

BEFORE THEIR LORDSHIPS:-

I.A. HAROON - HON. KADI SCA

S.O.MUHAMMAD - HON. KADI SCA

A.A. IDRIS - HON. KADI SCA

APPEAL No: KWS/SCA/CV/AP/LF/03/2010

NDAFOGI ABUBAKAR - APPELLANT

VS

FATIMA NDAFOGI ABUBAKAR - RESPONDENT

PRINCIPLE:

i) When a case is before a judge, judgment should not be entered in favour of either party until both parties are heard.

BOOKS/STATUTES REFERRED TO:

i) Order 9 Rule 3 of the Area Courts Civil Procedure Rules of 2006.

ii) Al-Qada'u Fi 'Ahdi 'Umar bn. Al-Khattab by Dr. Nasir bin Aqeel bin. Jabir Atturaefee; Vol. II, P. 622, 626-627.

iii) Ashal-ul-Madarik by Abubakar bn. Hassan Al-Kasnawiy; P. 199- 200

iv) Jawahir Al-Iklil by Sheikh Salih Abdu – s- Samui'l Al-Abi al- Azhariy; Vol.II, P.225.

JUDGMENT WRITTEN AND DELIVERED BY S.O.MUHAMMAD

Fatima Ndafogi, the respondent sued Ndafogi Abubakar, the appellant for divorce on the ground of lack of love at the Area Court I, Shonga in Suit No. 52/2009 and Case No. 52/2009 dated 27-5-2009. After some adjournments at the instance of the respondent, both parties were heard by the trial area court on 6/8/2009. One Babatunde Abdullah Esq. appeared for the respondent while the appellant sought for another adjournment to enable his counsel later known as Giwa Abubakar to represent him accordingly. The case was therefore adjourned to 20/8/2009 for continuation of hearing.

However, the case re-opened only on 20/10/2009 during which time one Husseini Jibril Esq. represented the respondent who was also present in court. The appellant was absent and he was not also represented. The trial area court invoked Order 9 Rule 3 of the area courts (Civil Procedure) Rules, 1971 to listen to the respondent and granted her prayer for divorce with the following orders as reproduced from the judgment.

> The plaintiff is free to marry any man of her choice from today. The plaintiff is order to observe 3 months Iddah.
>
> The defendant can claim his dowry when he is ready to do so at any court. Appeal right – any aggrieved party can appeal within 30 days (sic).

When we sat at Share on 23rd February, 2010, we granted the appellant's motion to appeal out of time within 14 days from the date of our ruling. He quickly afforded himself this opportunity and filed this instant Appeal No. **KWS/SCA/CV/AP/LF/03/2010** dated 1st March, 2010. For clarity purposes, we hereby reproduce his 3 off grounds of appeal as follows:-

> (1) That decision of trial Area Court 1 Shonga was unreasonable unwarranted and can not be supported because there was no fair hearing. (sic).

(2) That the trial court heastly granted the divorce to my wife in my absent against my wish. (sic).

(3) That the trial court did not give me opportunity to defend my self.(sic).

We sat on the 23rd March, 2010 to hear the appeal. Both parties represented themselves. In his very brief statement before us, the appellant re-counted how he told the trial area court that he had a counsel to represent him in this case and that he was granted adjournment to enable his counsel to appear and represent him. According to him, himself and his counsel attended the court on the adjourned date of 20/8/2009 but the court did not sit. He stated further that he expected the court to re-serve him with a new date but that was not forthcoming. All what he heard later was that the respondent had been granted divorce. He wondered why the court did not call for witnesses before granting the divorce. Finally, he said that he did not understand that type of divorce because he did not want to divorce his wife.

In her response, the respondent confirmed the efforts of the appellant that he did not want her to divorce him. It was because of this, she continued that the appellant went to her parents for an intervention which she said she rejected on the basis of lack of love again for him. She also confirmed the number of adjournments suffered at the instance of the appellant and when, finally, both parties appeared before the trial area court. The respondent told us that the appellant's counsel could not attend the court on the next adjourned date because of illness and that another 3 weeks adjournment was granted. According to her, both the appellant and his counsel did not attend court on the next adjourned date. She therefore requested the court to grant her divorce and the court obliged. Finally, the respondent urged us to confirm the trial court's judgment because; the appellant had been duly notified of the court's decision.

On our part, we carefully went through the 4 – page record of proceedings and also perused the 3 No exhibits attached. exhibit 'A' was a letter dated 27/5/2009 and addressed to the trial Area Court Judge by the appellant seeking adjournment of the case from 27/5/2009 to 9/6/2009 because of his on-going examinations at the College of

Arabic and Islamic Legal Studies, Ilorin. exhibit 'B' dated 8/6/2009 was another letter by the appellant seeking further adjournment from 9/6/2009 "till two weeks coming" because of the same reasons given in exhibit 'A'. Finally, exhibit "C" dated 25th June, 2009, by the same appellant was another letter also seeking for further adjournment from 30th/6/2009 due to the same reasons of examination writing.

In totality, we felt that this appeal bothered mainly on whether or not the appellant had been given fair hearing before the trial area court in its decision which dissolved his marriage with the respondent. **Exhibit A,B**, and **C** seemed to provide a positive answer of yes.

But another careful perusal of the records viz-a-viz the corroborative statements of both parties before us proved otherwise. **Exhibit A, B**, and **C** in our opinion seized to be relevant with the appearance of both parties before the trial area court on 6/8/2009. This fact was attested to by the trial area court itself at P. 3 of the record of proceedings when the court recorded as follows:

> **6/8/2009 cases reopended and the membership of bench does not change (sic) appearance - both parties present and speak Nupe (Emphasis ours) (sic)**

The appellant even in the open court appreciated the consideration of exhibit A, B, and C when he said

> I am very grateful for the permission granting me to do my examination (sic)

Furthermore, on this date under reference (i.e. 6/8/2009), one Babatunde Abdullah Esq. represented the respondent while the appellant also told the court that he had his own counsel too, Giwa Abubakar Esq. but that he was sick he could not attend the court on the adjourned date. He therefore sought for 4 weeks further adjournment during which time he hoped his counsel could appear on his behalf. The respondent's counsel conceded to only 3 weeks adjournment to which the appellant and the court obliged. With this development, we repeat, for the purpose of emphasis, that exhibit A, B, and C, in our strong opinion, had seized to be relevant and we so hold.

Be that as it may, we therefore considered what happened between the adjourned date and 20/10/2009 when the matter was decided.

Going by the record of proceedings, the adjourned date after 3 weeks fell on 26/8/2009, everything being equal. Throughout the record of proceedings, there was no indication that the court sat on that day. However, the matter was heard and decided on 20/10/2009 during which time the marriage was dissolved in the absence of the appellant.

The result of our scrutinizing the record of proceedings showed that between 6/8/2009 when both parties appeared before the court and 20/10/2009 when the marriage was dissolved, there were 2 clear months and 2 weeks, or thereabout.

We went further and directed our Registry in Share to go and find out at the trial court whether or not both parties – more particularly, whether the appellant – was served to appear on 20/10/2009. What the trial Area Court could send to us were exhibit A,B and C already extensively dealt with in this judgment.

In view of this development, we felt that the appellant had not been given fair hearing because there had been nothing to show that he was summoned to appear in court on 20/10/2009 when the respondent was heard and the case determined in her favour.

We therefore agreed with grounds 1 – 3 of the appellant's grounds of appeal as reproduced above where he stated in part, that the trial Area Court hastily granted the respondent divorce without given him…."opportunity to defend itself". Moreover, we were of the opinion that invocation of Order 9 Rule 3 of Area Courts (Civil Procedure) Rules, 2006 by the trial area court was not yet due in view of the fact that both parties met only once before the court according to the record of proceedings.

It is trite under Islamic law that the principle of fair hearing shall not be violated in any way but shall be upheld. We relied on the prophetic directive reported by Caliph Alli bn Abi Talib as follows:

(1) When two parties appear before you, do not enter judgment in favour of either party until you have listened (or heard) the other party.

(see Vol.II p/622 of **"Al-Qadau Fi- Ahdi Umar bin Khattab"** by Dr. Nasir bn ‘Aqeel bn jaasir Attraefee.

(2) The jurists, may Allah be pleased with them, enumerated areas where the judge should ensure justice (between the parties before him); the manner by which each party enters the court, the manner of sitting of the two parties (before the court); the manner by which the court addresses either party and the manner by which each party is heard. (see pp.626 -627 of the first authority quoted above).

(3) See also pp.199 – 200 of **Ashalul – madarik,** by: Abubakar bin Hassan Al-Kashnawi and also.

(4) **Jawahirul Ikleel** by Sheikh Salih Abdus – Sami Al-Abee Al-Azharee, vol.2 p.225.

إذا جلس إليك الخصمان فلا تقض لأحدهم حتى تسمع من الآخر كما سمعت من الأول...

(راجع/ القضاء في عهد عمر بن الخطاب للمؤلف: الدكتور/ناصر بن عقيل بن جاسر الطريفي , الجزء الثاني , ص 622).

وقد ذكر الفقهاء - رحمهم الله تعالى- أنواعاً من الأشياء التي يجب على القاضي أن يعدل فيها ، كالدخول عليه ومجلسهما منه، وطريقة مخاطبته لهما والسماع منهما ....

(راجع/ القضاء في عهد عمر بن الخطاب للمؤلف: الدكتور/ ناصر بن عقيل بن جاسر الطريفي , الجزء الثاني ، ص626-627)

All these authorities were in consonance with s.36 (1) of the constitution of the Federal Republic of Nigeria, 1999 which provided as follows:

36 (1) In the determination of his civil rights and obligations a person shall be entitled to fair hearing with a

reasonable time by a court or other tribunal established by law…..

In our opinion, the trial Area Court did not give the appellant a fair hearing, which he was entitled to within a reasonable time. certainly, hearing of the case of divorce determined in one day involving just one out of the two parties cannot be described as fair and just.

In view of the foregoing, we opined that this appeal must succeed and we so ordered. We further order that the case be heard de-nov by the same area court 1 Tshonga bearing in mind the Islamic law principle of fair hearing in all its ramifications.

We order further that the case shall be given accelerated hearing in view of the nature of the subject matter- divorce on the ground of lack of love.

Appeal succeeds.

SGD	**SGD**	**SGD**
A.A. IDRIS	**I.A. HAROON**	**S.O. MUHAMMAD**
HON. KADI	**GRAND KADI**	**HON. KADI**
7/4/2010.	**7/4/2010**	**7/4/2010.**

IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIA,
IN THE SHARIA COURT OF APPEAL OF ILORIN JUDICIAL DIVISION,
HOLDEN AT ILORIN ON WEDNESDAY 14TH DAY OF APRIL, 2010/
RABIULTHANNI 30TH 1431 A.H

BEFORE THEIR LORDSHIPS:-

I.A. HAROON	**-**	**KADI, S.C.A**
A.A. IDRIS	**-**	**KADI, S.C.A**
S.M. ABDULBAKI	**-**	**KADI, S.C.A.**

MOTION NO. KWS/SCA/CV/M/IL/05/2010.

BETWEEN

JAMIU ALAO	**-**	**APPLICANT**
VS		
AMUDALAT AKANKE	**-**	**RESPONDENT**

PRINCIPLES:

1. Right of appeal is a constitutional one.
2. The disobedience to an order of a competent court shall be viewed as contemptuous, but contempt proceeding, are technical and must be strictly proved because it is criminal in nature which needs to be proved beyond reasonable doubt.
3. It is trite that nobody is punished for an offence the notice of which has not been brought to his/her attention Q.17: 15.
4. It is trite under islamic law court that court may in its discretion make any order within its powers and jurisdiction which it considers necessary for doing justice whether such order has been asked for by any of the parties or not.
5. Punishment for contempt is provided under tazir.

BOOKS/STATUTES REFERRED TO

1. Qur'an Chapter 17 verse 15
2. Order IX Rule 1 of the Sharia Court of Appeal rules.

RULING: WRITTEN AND DELIVERED BY S.M. ABDULBAKI.

This is a Motion on Notice dated and filed on 9th March, 2010 by the judgment creditor/applicant Jamiu Alao praying the court to commit judgment debtor/contemnors, Amudalatu Akanke, Ibrahim Akanbi to prison indefinitely until they produce the child to the judgment creditor for him to exercise his right of paternity by giving her a good name in line with the judgment of

8th day of January, 2002 and as further ordered by this honourable court in its judgment of 17th February 2010. And for such further order(s) as this honourable court may deem fit to make in the circumstance of this case.

The motion which was brought under the inherent jurisdiction of this court was supported by fifteen (15) paragraphs affidavit. The judgment/debtor, Amudalat Akanke too, filed eleven (11) paragraphs counter affidavit. Attached to the counter affidavit are two exhibits marked as exhibit A and B respectively. exhibit `A' is a copy of a Motion on Notice seeking for a stay of execution of the order of this honourable court delivered on 17th February, 2010. While exhibit `B' is a copy of notice of appeal to the Court of Appeal, Ilorin Division.

Moving the application, the learned counsel to the applicant A.H. Folorunsho Esq. said that this Motion on Notice was dated and filed on 9th March, 2010 and was brought under the inherent jurisdiction of this court and praying for an order of this honourable court committing the judgment debtor/respondent to prison indefinitely until she produces the child in dispute to the judgment creditor for him to exercise his right of paternity by giving her a good name in line with the judgment of the trial court, Area Court Grade 1 No.3 delivered on the 8th January, 2002 and as further ordered by this honourable court on 17th February, 2010. Giving the gist of the application and the supporting affidavit, the learned counsel said that the trial court gave the order for the production of the child in dispute to the applicant for naming in the year 2002 and that the same order was later confirmed by this honourable court on October, 2002. He submitted that despite the order, the respondent refused to obey the order. He informed the court further that the same trial court, again, further gave another order in the execution of the earlier order on 7th August , 2008 and which order was again affirmed by this court on 17th February, 2010 and that the judgment debtor was ordered to produce the child to the registry of this court within fifteen (15) days. He said that the period given to the judgment debtor expired on 4th March, 2010. He lamented that up till the moment, i.e. 30th March, 2010 the judgment debtor has refused to comply with the order of this honourable court.

He submitted that anybody who disobeys the order of the court is liable to be held for contempt and punished for same. He said further that the essence of going to court is to settle dispute and in such a situation, one party against the other must

win in the dispute and that the winning party must be allowed to enjoy the fruits of the favourable judgment. He referred the court to the antecedent of this matter showing that the applicant has gotten favourable judgment since year 2002. He said all the attempts made by judgment/debtor to get the order set aside had not been successful. He further explained that the judgment debtor has shown disrespect to two subsisting orders namely;-

> First, order, the order of the lower court made on 7th August, 2002 and confirmed by this honourable Court in October, 2002. Second, order, the order of the lower court which was confirmed by this honourable court on 17th day of February, 2010.

Following the antecedent, the learned counsel submitted that unless the respondent is committed to prison, she would not comply with the order of this honourable court. He relied on all the paragraphs of affidavit in support of the motion and prayed that in the interest of justice the application be granted by committing the judgment debtor to prison until the order of this court is complied with.

In the alternative, he prayed for the order of the court to compel the judgment debtor to bring the child in dispute to this honourable court. He moved in terms of Motion paper. He urged us to discountenance with all the paragraphs of the counter affidavit.

In opposing the application, the learned counsel to the respondent, U.S. Imam Esq. told us that the respondent by herself sworn to and filed eleven counter affidavit against the application on 29th day of March, 2010 with two exhibits: A and B. exhibit `A' is the copy of the motion on notice for stay of execution of the judgment of this honourable court while exhibit `B' is a copy of notice of appeal against the decision of this honourable court. He sought the leave of this court to rely on all the paragraphs of the counter affidavit and the exhibits thereto.

The learned counsel submitted that the applicant had failed to prove before this court, any act of contempt committed by the respondent against the order of this honourable court. He submitted further that contempt of court is a criminal offence and must be proved beyond reasonable doubt. He conceded that this court can commit any person to prison for contempt but that all the submissions of the learned counsel to the applicant are not based on fact and law but on sentiment which has no place

in our law. He conceded that the fifteen (15) days given by the order of the honourable court within which respondent to comply expired on 4th day of March, 2010 but that exhibits A and B were filed on 1st day of April, 2010 which is three (3) days to the expiry date of the order of this honourable court. He submitted that all the attempts which were previously made by the respondent, whether failed or successful were within the law. He argued that since the respondent has appealed against the order of this court to the court of appeal, she could not be taken as having disobeyed the order of this honourale court because right of appeal is a constitutional one. He conceded that notice of appeal cannot operate as stay of Execution but that justice and morality demand for stay once an appeal has been filed. He submitted that the respondent having exercised the right to appeal cannot be said to have committed contempt of court.

He further argued that the request for the surrender of the respondent in this matter at this stage will render the appeal nugatory.

On the alternative prayer made by the applicant, he argued that since that prayer is not contained on the motion paper, it cannot be treated as ancillary claim to the main claim in the motion paper and thus cannot be granted because the court cannot grant prayer not asked for.

He finally prayed that the application be dismissed on the following grounds:

(1) That the contempt proceeding has not been proved as required by law. (ll) It will amount to punishing the respondent for appealing against the judgment of this court.

In reply, A.H. Folorunsho, Esq. submitted there has not been any appeal filed by the respondent to the Court of Appeal against the judgment of this honourable court. He finally submitted that an order of a competent court remains valid until it is set aside.

We reflected over the submission of the learned counsel to the parties in this matter. We say that any disobedience to an order of a competent court shall be viewed as contemptuous. But contempt proceedings are technical and must be strictly proved because it is criminal in nature. It needs be proved beyond reasonable doubt. In this case, we notice that the act of the respondent is disrespectful to

the lawful order of competent court. It is punishable under tazir. The question now is, has the allegation been proved beyond reasonable doubt? In this case, this honourable court gave its order on 17th February, 2010, but there has not been any follow up by the applicant to enforce the order. The applicant ought to liaise with the registry of this court to bring the order given by this court to the attention of the respondent. The judgment creditor must be personally served with the order of this court requiring her to produce the child in dispute to this court. It is trite that nobody is punished for an offence the notice of which has not been brought to his or her attention. Allah says:-

And we never punish until we havem sent a Messenger (to give warning). Qur'an 17 verse 15.	[وَمَا كُنَّا مُعَذِّبِينَ حَتَّى نَبْعَثَ رَسُولاً] سورة الإسراء ، آية (١٥) .

There is no evidence that necessary steps have been taken to bring the judgment debtor to become aware of the order of this honourable court made against her. Committing her to prison means depriving her constitutional right to liberty. It will be unconstitutional to deprive any citizen of the right to liberty in the circumstances of his case. Particularly in view of exhibits A & B filed by the respondent. It is in the light of the above that we find that failure to prove that the respondent has become aware of the order of this honourable court is fatal to the success of this application. Likewise the right of appeal lawfully exercised by her must not be overlooked. The application to commit the judgment debtor to prison shall be and it is hereby refused.

However, we notice that the issue that led this court to give the order to produce the child in dispute is to make the applicant comply with the requirement of Islam that a child should be given a good name on the 7th day of its birth. This opportunity has not been given to the applicant since the year 2002 till date. Here, justice and morality demand that the child must be produced for naming. This order shall be the proper order in our view and we so hold. This is so because, there has been no appeal on the order of paternity made by the trial court. That order has also not been set aside by any higher court. Since the paternity has been granted to the applicant, the interest of justice requires that he

should be allowed to see the child and give the child a good name. The law provides in Order IX of the Sharia Court of Appeal Rules thus: Order IX Rule 1.

> The court may in its discretion make any order within its powers and jurisdiction which it considers necessary for doing justice whether such order has been asked for by any or not.

It is hereby ordered that the respondent/judgment debtor must bring the child in dispute within seven (7) days from today, 14th day of April, 2010.

The registry shall make necessary efforts to serve the respondent with this new order.

Application for committal of the respondent to prison fails. Order to produce the child in dispute for naming within seven days is hereby made.

Application for committal fails in part and succeeds in parts.

SGD	SGD	SGD
S.M. ABDULBAKI KADI 13/04/.2010	**I.A. HAROON KADI 13/04/2010**	**A.A.IDRIS KADI 13/04/2010**

IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIA ,
IN THE SHARIA COURT OF APPEAL OF ILORIN JUDICIAL DIVISION
HOLD AT ILORIN ON THURSDAY 29TH APRIL 2010,
(YAOMUL-KHAMIS 15TH JUMADAL AWWAL 1431 A.H)

BEFORE THEIR LORDSHIPS:

A.K. IMAM FULANI - HON. GRAND KADI
I.A HAROON - HON. KADI
A.K. ABDULLAHI - HON. KADI

APPEAL NO. KWS/SCA/CV/AP/IL/12/2009

BETWEEN:

ABDULLAHI IBRAHIM - APPELLANT
AND
FATIMAT OTTE -
AMINAT ADEBAYO - RESPONDENTS
BABATAPA -

PRINCIPLES:

i) Evidence of two unimpeachable male or a male and two female witnesses shall be relied upon in any dispute relating to consanguinity and monetary claim.

BOOKS / STATUTES REFERRED TO:

1. The Glorious Qur'an (Chapter 4:6)
2. Al-Wajiz fi Ahkam Al-Usrat Al-Islamiyyat by Dr. AbdulMajid Mahmud Matlub; P. 386
3. Al-Adalat Al- Qada'iyyat Wa At-Tatbiq Fi Ash-Sharia'at Al-Islamiyyat by Hassan Taysir Sammuwat ; p.168
4. Jawahir al- Iklil by Sheikh Salih Adbu-s-Sami'l Al-Abi al-Azhariy; Vol.2 P.226
5. Ihkam Al-Ahkam 'Ala Tuhfat Al-Hukkam by Abubakar Al-Andalusiy; P. 33

JUDGMENT: WRITTEN AND DELIVERED BY: I.A. HAROON

The appellant, Abdullahi Ibrahim sued the respondents Fatimat Otte, Aminat Adebayo and Baba Tapa in **Case No. 182/08 at the Area Court 1 No 1 Center Igboro, Ilorin.**

The plaintiff at the trial court made the following claims:

1. That all the three respondents are not true children of Alhaji Ibrahim Share of Asajemase Compound, Agaka, Ilorin, his late father.
2. That the three respondents should return all the properties i.e. money and valuable materials in their possession to him.

3. That the three respondents should also stop parading themselves as the son and daughters of Late Alhaji Ibrahim Share.
4. That the three respondents should vacate and stop visiting the said Ile Asajemase, Agaka.

He further stated before the trial court that some properties left over by Late Alhaji Ibrahim Share who died while he (the appellant) was young in 1979 are:

1. A house consisting 3 bedrooms and 2 parlour situated at Asajemase Compound, Agaka Area, Ilorin.
2. A landed property at Amilegbe Area, Ilorin (no specifications).
3. A landed property at Eleboto, Sango Araea, Ilorin. And
4. A landed property at Geri Alimi Area, Ilorin.
5. A sum of N 20,000.00 from Fatimat Otte and N 30,000.00 from Aminat Adebayo being fees of the pieces of land sold at Eleboto, Sango Area Ilorin.

He told the trial court that the 3 defendants were born by Husain Loma a junior brother to Late Alhaji Ibrahim Share who died in 1993. He did not call any witness but tendered: (i) a Notice of preliminary Objection marked exhibit A dated 18/02/2008, (ii) A record of proceeding from Area Court 1, Center Igboro, Ilorin of 02/07/2002 marked Exhibit B and (iii) Sharia Court of Appeal No. KWS/ SCA/CV/AP/IL/02/2007 decided on **13/07/2007** marked exhibit C.

The three respondents denied all the claims and stated that they were all born by the same father, late Ibrahim Share of Asajemase Compound, Agaka Ilorin. They called 2 witnesses, a male Mallam Toyin Alao who is the Magaji of Asajemase Compound and a female Alhaja Sifawu Mukeloso who is the only surviving wife of the decease Alhaji Ibrahim Share.

The trial court after hearing the matter ruled that the case was on the determination of paternity of the three respondents. That the appellant is not competent to challenge the paternity of any of the three.

Respondents, as they are either his elder sister or brother. That the only competent person who can challenge the paternity of the three respondents was the deceased Ibrahim Share their father. The court therefore struck out the case. The appellant having been aggrieved by the decision of the Area Court thus appealed to our court to seek for redress.

On 2nd February 2010 when the matter came up before us for hearing, the appellant was present with the 1st respondent Fatimat Otte and the 3rd respondent Baba Tapa, while the 2nd respondent Aminat Adebayo was represented by her mother. All

the parties were self-represented. The appeal was rested on 5 grouds:

1. That the trial court misdirected itself when the judge regarded the appellant's case as a suit for determination of paternity simpliciter.
2. That the trial court erred in law when the judge held that the appellant lacked locus stand! to challenge the paternity of respondents post demise of the appellant's father.
3. That the court erred in law when the judge held that the paternity of the respondents which had been accepted by the appellant's father could not be re-determined by the court.
4. That the trial court erred in law when the judge held that the applicant's case was based on suspicion and guess work.
5. That the trial court erred in law when the Judge neglected or refused to make pronouncement on 2^{nd} – 5^{th} relief's sought by the appellant before the court.

The appellant while making his statements before us dropped ground 4 of the appeal and relied on the remaining grounds 1, 2, 3, and 5.

GROUND 1

Arguing his first ground, he stated that the main issue in the appeal is: who are the children of the late Alhaji Ibrahim Share who owned the landed property at Eleboto, Sango Area, Ilorin and the building at Asajemase Compound, Agaka, Ilorin.

That the respondents should prove their relationship to the deceased Alhaji Ibrahim share, as daughters and son. That the matter is not on paternity as held by the trial court. He said the matter is on succession and determination of whether or not the respondents have the right to inherit the deceased. This according to him is different from paternity treated in **Bulugh Al-Maram**, which dealt with paterniry as a result of pregnancy. He told us that the issue of paternity did not arise during the lifetime of their father and that the three respondents are children of his uncle Alhaji Husain Loma.

He said his case before the trial court was to prevent the injunction of **Qur'an 4:6** and that the properties of his late father left with the respondents then be given to him now that he had grown up.

GROUND 2

That the decision of the trial court that he has no locus standi is invalid and unacceptable. He said the trial court decision is setting a barrier before him and the estate of his late father and that the judgment is a violation of Islamic legal principles. He made reference to **Ihkamul Ahkam p.10** on the

invalidity of the trial court judgment. He stated that a judge must have sound mind and wisdom.

GROUND 3

He told us that the respondents had no competent witnesses to establish their case before the trail court. The **DW II** is an interested party in the case she cannot give evidence in favour of her daughter who is the first respondent. He refered to case of **Salimanu Baba Musili & 1 Other Vs. Alhaji Oba Atanda…. 2005 Annual Report Sharia Court of Appeal, Ilorin, Kwara State P. 17 particularly 28**. He started that his case is the determination of consanguinity of the parties. He referred us to our decision in the case of **Adijat Abebi Vs. ALHAJI Ambali Alao 2005 Annual Report Sharia Court of Appeal, Ilorin, Kwara State. P. 151 at 160**. He said the **DW I** could not be a competent witness in this matter as he was a representative in the same matter in the court proceeding of 06/06/2008. He referred to the case of **Ibrahim Jibbo Vs. Adamo Abake 2005 Annual Report Sharia Court of Appeal, Ilorin, Kwara State.p. 163 at 169**. He stated that even if the witnesses were admitted being competent, the evidence of one male or female fell below the required standard in Islamic law. He urged us to take judicial notice of our previous decision in exhibit C where the two rooms were determined whereas the rooms here are 3 rooms though in the same building.

GROUND 5

He made reference to page 4 of the record of proceedings and stated that there were 4 reliefs but none of them were resolved by the trial court. He said that reliefs under Islamic law must not be neglected.

He then referred to case of **Rashidat Olabintan Vs. Abdulhamid Olabintan 2000 Annual Report Sharia Court of Appeal, Ilorin, Kwara State p. 63 at 69**. He told us that facts and evidence justifying the determination of the said neglected reliefs are contained in the record of proceedings.

He prayed us to allow the appeal and set aside the decision of the trial court. That we order 1st and 2nd respondents to refund the sums of #20,000.00 and #30,000.00 respectively back to him and the 3rd respondent to refund #1,200.00 on monthly basis with effect from 07/11/2007 to date as rent due. That the 3rd respondent should vacate the 3 rooms he is occupying now for him. That the respondents be barred henceforth from parading themselves as children of late Alhaji Ibrahim Share respectively.

RESPONDENTS:

Alhaja Shifau Ibrahim Share representing Fatimat Otte, the 1st respondent stated that she was a stepmother to the appellant and that his mother was next to her. She told us that late Ibrahim had 7 issues: 3 males and 4 females. She gave their names in the following order: Fatimat, Hawau, Aminat, Madinat Akanke then Baba Tapa, Alfa Ahmadu and Abdullahi. She told us that they were all born by the same father, late Ibrahim Share. That late Ibrahim Share had 4 wives and that she is the only surviving one. She stated that she is the mother of Fatimat, Hawau, Madinat and Ahmadu. That Binta Kannike was the mother of Aminat, and Inna Rifon was the mother of Baba Tapa.

The 2nd respondent Aminat Adebayo objected to all what the appellant had said. She told us that they all belong to the same father. That Abdullahi Ibrahim the appellant was 2nd to the last born of late Ibrahim Share. That the appellant's mother had no room at Agaka as she lived in a rented house. She told us that their father died on Thursday 15th August 1979. That he had another house at Loma. That the late Ibrahim had three lorries, that while Abdullahi's brother took one of the three lorries to Lagos, Abdullahi took the other two and the respondents knew nothing about them. That the land in reference was sold for #270,000.00 while she was given only #30,000.00. That all the statements made by Abdullah were not true.

The 3rd respondent Baba Tapa said that all the statements of Abdullahi were bundle of lies. He told us that he was the first son of the late Ibrahim Share and that all of them including the appellant are children of the deceased. That his mother was the first wife and senior to Alhaja Shifau. That the appellant's mother died while he was 4 years old and was put under the care of Alhaja Shifau. That his father thereafter married Alhaja Binta, mother of the 2nd respondent, and Alhaja Fatimat popularly called Iya Idowu, who was the mother of the appellant, Ibrahim Abdullahi. He said their father died on 15th August 1979 and was taken to Babanloma where he was buried at Ile Amuyun. He said Abdullahi was 4 years old then. That the properties of late Ibrahim were distributed after 40 days of his death. That it was Abdullahi who initiated the idea of selling the land at Eleboto, which was not distributed then. That after the sales he was not given anything. He said the three rooms in question were distributed among the male children. He reiterated that the three of them were born by the same father, the deceased Alhaji Ibrahim Share.

The appellant in his brief reply to the statements of the respondents said that all they said should be regarded as after thought. He said the 3rd respondent Baba Tapa had earlier

admitted before the Area Court in Suit **No. 48/2002 and Case No. 132/2002** marked exhibit B that his father was one Husain Loma. He said that an admission of an adult is binding on him. He denied selling the land at Eleboto and said it was sold by one Ahmadu who is one of their relatives. He also said that the properties of the late Ibrahim Share had not been distributed but kept under the care of the respondents. He urged us to allow the appeal.

Having carefully perused the records and the attached exhibits from the trial court and patiently listened to the parties involved in this appeal. It is our well-considered view that justice of this matter required our focus on some vital issues raised in the appeal by the appellant.

Firstly, whether the trial court was right in its decision to strike out the case on the ground that the appellant lacks competences and ***locus standi*** to make the claim since their father was dead. Our position on this is that where the claim of consanguinity is related to issues such as inheritance or maintenances, which may not be determined unless the blood relationship to the deceased is cleared, such claim shall be allowed. The trial court ought to have heard the case on its merit and decided it accordingly. This view is strengthened by the provision of law, which reads thus:

Where the claim is made on consanguinity mainly to establish blood relationship/paternity after the demise of the father or son… and such claims of al-nasab is related to cases such as inheritance and maintenance, which may not be settled unless the former is determined, such claim on al-nasab is allowed.

" وإن كانت الدعوى بعد وفاة الأب أو الابن ... وكانت ضمن دعوى حق آخر لايثبت إلا إذا ثبت النسب كالنفقة أو الميراث كانت الدعوى مقبولة " .

(الوجيز في أحكام الأسرة الإسلامية للدكتور/عبد المجيد محمود مطلوب، ص 386)

- **See: Al- Wajiz Fi Ahkamil Usrah al- Islamiyyah, by Dr. Abdul Majid Mahmud Matlubt, p.386.**

It is thus clear from the above law that the trial judge erred in law when he declared that the appellant had no locus standi and therefore struck out the case.

However, the onus of proof in case such as this fell upon the shoulder of the claimant, herein the appellant and not the respondent because he is the one challenging the legitimacy of

the sonship " البنوة " of the three respondents to the deceased, Ibrahim Share in the instant appeal. The sharia in its golden procedural rules provided thus:

"جانب المدعي ضعيف؛ لأنه يقول خلاف الظاهر فكلف الحاجة القوية ، وهي البينة "

انظر :(العدالة القضائية وتطبيقها في الشريعة الإسلامية للدكتور/ حسن تيسير شمَّوط، ص168).

The side of claimant is weak because he is holding to what is contrary to the custom; therefore he is required to adduce a Powerful proof.

- **See Al- Adalat al-Qadaiyyah wa Tatbiqiha Fi ash-Sharia Al-Islamiyyah by Dr. Hasan Taysir Shammuwat, p.168**

All claims of ***al-nasab*** consanguinity/paternity shall be established only by evidence of two unimpeachable male witnesses or a male and two female.

والبينة التي يثبت النَّسب هنا هي شهادة رجلين أو رجل وامرأتين.

Claim on consanguinity / paternity shall be established by evidence of two male witnesses or a male and two female.

- **See: Al-Wajiz… op. cit. p.385.**

It is clear from the above laws that the appellant in the instant appeal had not established his case as required by law. He did not call witnesses to prove his claim of denial of the three respondents the right of son ship " البنوة" to the late Ibrahim Share. And until the requirement of law is met by the appellant, the three respondents i.e Fatimat Otte, Aminat Adebayo and Baba Tapa shall retain their present status and we so hold. The two witnesses of a male and a female though inadequate as a proof in cases such as this by the respondents were not necessary at this stage. All the cases and the attached exhibits cited, referred to or relied upon by the appellant shall not be helpful in this instant appeal because, they can only be supportive to the oral evidence as required by the Sharia.

We took judicial notice of the statements of the appellant as reflected in the trial court record of proceedings that he was a minor at the time his father late Ibrahim Share died and that he did not know the history pertaining to his life with regards to number of wives and children. The statements read thus:

That the name of my father is Alhaji Ibrahim Share … died in 1979 of which I was very Young by them, therefore, I have no opportunity To hear the history of

how things from his Mouth (sic) particularly, the number of wives he had and number of children he got or left behind.

- ***See the Trial Court Record of Proceedings, p. 4 LL 30-32.***

The above statements clearly showed that the appellant is ignorant of his claims, not certain talk less of being accurate. Whereas, it is trite in Islamic law that claims must be well know and certain. These statements had also weakened the chance of the appellant particularly when there were no proofs to establish his case. ***See Jawahirul Iklil Vol.2, p.226***, where it reads:

The plaintiff shall make a claim that is known, certain and definite in its quantity, nature and type not ambiguous or frivolous otherwise the claim shall not be allowed.

فيدعى بمعلوم محقق (قدره ، وجنسه ، وصفته لا مجهول، لا ظنون، ولا مشكوك، ولاموهوم) وإلا لم تسمع . " جواهر الإكليل ج2،ص226" .

We equally took judicial notice of the statement of the appellant regarding the admission of the 3rd respondent that the appellant's father and his father were of the same parent and that while the appellant's father died in 1979, his own father died in 1973 (see the attached exhibit B PP. 1&2). Our reaction to this was that the statement though an admission cannot be binding on the respondent because the proceeding was not concluded by the trial judge then. We therefore concerned ourselves with the record of proceedings on the instant appeal and the statement made before us by the 3rd respondent in which he denied the appellant's claims along with the other two respondents.

The second issue is the claim made by the appellant regarding the monetary and landed property. It is our candid opinion that such claims must equally be proved and established in line with the provision of Sharia.

All these claim must be proved in line with the requirement of our law before any refund is due to the appellant. They remain mere assertion until the claim is established by either two male witnesses or a male and two females. The law reads thus;

And a male and two female witnesses shall be relied upon in any dispute

ورجل بإمرأتين يعتضد في كل ما يرجع للمال اعتمد. (أحكام الأحكام على تحفة الحكام لأبي بكر محمد الأندلسي ،

relating to money. **ص 33).**

- ***See Ahkamul Ahkam 'Ala Tuhfatil Hukam by Abibikr Muhammad al- Andalusiyyi,p.33***

In the light of foregone, it is evident that the appellant has to establish his claim by oral evidence that the three respondents in this instant appeal are not legitimate children of the Late Ibrahim Share and must also prove his claim on monetary and landed property before his prayers could be granted.

We order a retrial of the case **de novo** under the Islamic Procedural

Rules and principles of establishing **al-nasab bi-l-bayyinat** (establishing blood relationship/paternity by proof) at the Area Court 1, No 1, Center Igboro, Ilorin with accelerated hearing.

The appeal succeeds in part and fails in part.

SGD	**SGD**	**SGD**
A.K. ABDULLAHI	**A.K. IMAM FULANI**	**I.A. HAROON**
KADI	**GRAND KADI**	**KADI**
29/04/2010	**29/04/2010**	**29/04/2010**

IN THE SHARIAH COURT OF APPEAL OF KWARA STATE OF NIGERIAIN
THE SHARIAH COURT OF APPEAL IN THE ILORIN JUDICIAL DIVISION
HOLDEN AT ILORIN ON FRIDAY, 21ST DAY OF MAY, 2010
8th JUMADA THANNI 1431 A.H,

BEFORE THEIR LORDSHIPS:

I.A. HAROON	**-**	**KADI SCA**
A.A. IDRIS	**-**	**KADI SCA**
S.M. ABDULBAKI	**-**	**KADI SCA**

12) ► MOTION NO. KWS/SCA/CV/M/IL/03/2010

13) ►MOTION NO. KWS/SCA/CV/M/IL/09/2010

BETWEEN:

AMUDALAT AKANKE -APPELLANT/APPLICANT

VS

JAMIU ALAO - RESPONDENT

PRINCIPLES:

There shall be no injunction order against any party just because of a claim made by other party, unless the applicant supports his claim with a strong reason.

Where preservation of the subject matter is not threatened, restraint order of stay would not be made

BOOKS/STATUTES REFERRED TO:

1. Bahaja Vol. 1 page 123
2. Fathul Aahli Maliki Vol. I Page 179
3. Tabsiratul Hukam Vol 1 pages 28 and 52
4. Al-Mudawanatul Kubrah Vol. 5 Page 2251
5. Sharihu Mayyarah Vol. I Page 130
6. Cap 122 laws of N/W 1963
7. Quran 5, V:8.
8. Order 3 Rules of Sharia Court of Appeal rules, SCA.
9. NNPC Vs Famfa Oil Ltd & Another (2009) SC pt 1 page 206.
10. Afro Tec Tech Service Nig ltd. Vs Mai & Sons Ltd and Another (2000) NSCOR 379.
11. Order IX R of SCA.

RULING: WRITTEN AND DELIVERED BY A.A. IDRIS

In this application O.Y. Gobir Esq. and Co. appeared for the applicant Amudalat Akanke, while Y.K. Sa'adu Esq. and Co. appeared for the respondent. This ruling is in respect of the consolidated motions filed by the applicant in case No: KWS/SCA/CV/M/IL/03/2010 and KWS/SCA/CV/M/IL/09/2010.

For a clear understanding of the fact of this case, it is necessary to give some historical background relevant to the present application. In so doing, we have taken judicial notice of all the relevant previous proceedings and court processes in this matter.

Before Area Court Grade III the appellant (A.Ibrahim Akanbi) in this case filed a motion on the ownership of her pregnancy on 27th February 2001 where he commenced action against the respondent Jamiu Alao claming the pregnancy of Amudalat Akanke. After taking evidence, the trial Area Court gave judgment in favour of the respondent on the 18th day of April, 2001. The applicant being dissatisfied with the judgement of the trial court filed motion for extension of time and substantive appeal which were filed on the 27/2/2001. But both the motion and substantive appeal were struck out on 18th April, 2001 for lack of diligent prosecution. Later in the year 2002 after the delivery of the pregnancy in dispute, she came up again with another appeal against the decision of the Area Court Grade III on paternity of the child in dispute which was filed on 11 – 1 – 2002, She later sought for leave to file additional grounds of appeal which were granted but at the end of the proceedings both the original and additional grounds were dismissed. After this judgment, Amudalat Akanke remained silent over our decision, until the year 2006 when she appeared again to seek the leave of this honourable court to appeal out of time to the Court of Appeal, Ilorin Division against our decision. After the proceedings, the court did not see any merit in her application, subsequently the application failed and was dismissed. As a result, she proceeded to the Court of Appeal, Ilorin Division and filed her request for extension of time against our decision on 21 – 8 – 2008 and at the end of the proceedings the Court of Appeal, Ilorin Division gave its reserved ruling as follows in Appeal No. CA/IL/SH/I/2004.

> The Appeal cannot be properly before us because of its incompetence. That being the case, application being incompetent, it cannot be granted, same is hereby

refused.

After the ruling of the Court of Appeal, Ilorin Division, the applicant later came to this honourable court to appeal against the decision of Area Court III, Ilorin. And after the hearing , this court gave judgment in favour of the respondent, and she was ordered to produce the child in dispute to the registry within two weeks for proper affiliation. The order on the applicant to produce the child in dispute was ignored by her and that caused this court to make another order on the applicant to produce the child in dispute for naming within seven days in motion **No. KWS/SCA/CV/M/IL/05/2010** which now brought the existence of the present application. The applicant herein, was not satisfied with these judgments and filed two motions for stay of execution of the decisions of this honourable court he prayed in both motions for stay of execution of the said orders made on 17th February, 2010 and 14th April, 2010 respectively pending the final determination of the appeal before Court of Appeal, Ilorin Division. According to the applicant herein, her grounds for the application as well as the facts of the appeal raised substantial, arguable points and special circumstances and that failure to stay will render the decision of the appeal nugatory if the court of appeal rules in her favour and that the success of the appeal will not jeopardize the interest of the respondent.

It is very unfortunate that the issue of naming a child has been lingering on between Area Court II, Shariah Court of Appeal and Court of Appeal, Ilorin for the past six years. It is wickedness. It appears that the applicant herein has resulted unto using the machinery of justice to oppress the respondent in this matter. This is discernible from clear misuse and abuse of court process to delay this matter unnecessarily. A case, which supposed to terminate within a short period, drag on for eight years.

When the applicant and respondent came before us for hearing, the learned counsel for the applicant sought the indulgence of the court on the possibility of consolidating the two applications with a view to achieving an expeditious determination. The learned counsel for the respondent appreciated and accepted the endeavour of his learned colleague and the court too consented to the proposal. The applications were then consolidated and argued together.

This ruling is therefore, a composite one containing two decisions. The first decision would be on application to stay the execution of the order of this court in its ruling No.

KWS/SCA/CV/AP/IL/13/2008, delivered on the 17th February, 2010 pending the final determination of the notice of appeal filed before the Court of Appeal, Ilorin Division. While the other decision would be centered around the application for stay of execution of order of this court in its ruling No. **KWS/SCA/CV/M/IL/05/2010**, delivered on the 14th day of April, 2010, pending the final determination of the Notice of Appeal filed before the Court of Appeal, Ilorin Division.

Moving the motion, the counsel to the applicant submitted that he has two applications before this honourable court. According to him, the first application was dated 1/3/2010 and filed same day, while the second one was dated 19/4/2010 and filed same day. He further submitted that they were brought under the inherent power of this honourable court seeking for an order of this honourable court to stay the execution of its judgment delivered on the 17th February, 2010 and our judgment delivered on 14th April, 2010 pending the final determination of the notice of appeal filed before the court of appeal, Ilorin Division and for such orders the court might deem fit in the circumstance of justice of this matter.

The learned counsel further contended that the first application was supported by 17-paragraph affidavits deposed to by the applicant. He informed the court that attached to the application is a document marked exhibit 'A' According to him, exhibit 'A' is Notice of Appeal filed before the Court of Appeal, Ilorin Division on the 1st March 2010. He further explained that the second application was also supported by 21-paragraph affidavits deposed to by the same applicant, which is equally attached to Notice of Appeal filed on 1st April, 2010.

Still on the issue of the affidavit, the learned counsel finally submitted that they would be relying on all the supporting affidavits, particularly paragraphs 2-15 of the first affidavit and paragraphs 2 –19 of the second affidavit respectively. He submitted that they would be placing reliance on the exhibits attached to the two affidavits. He urged the court to accede to their prayers.

For the determination of this application two issues were formulated by the counsel to the applicant and they are as follows:-

(i) Whether the attitude of the applicant so far in this case amounts to disobedience to the order of the court as to

warrant the court refusing to exercise its discretion in her favour.

(ii) Whether the applicant is entitled to the stay of execution she is applying for.

On the 1st issue learned counsel to the applicant submitted that the attitude or conduct of the applicant in the case before the court could not be tantamount to flagrant disobedience of court order.

He submitted further that the respondent in this case applied to Area Court No. III, Ilorin for the execution of the judgment of the lower court delivered on the 8th January 2002. The content of the said judgment was to the effect that the child in dispute should be made available within three days for naming. He narrated further that on the 7th August 2008, the trial court judge Abdullah Ibrahim delivered his ruling and ordered that the child be made available within thirty days from the date of ruling with instructions that the father had the right to determine where she would live. This according to him was quiet different from the order sought to be executed.

The applicant having being dissatisfied appealed to this court and judgment of this court was delivered on 17th February, 2010 in favour of the respondent herein. He further submitted that the applicant not equally satisfied with the judgment of this court proceeded to the court of appeal, Ilorin division and appealed against the judgment and explained that, that made the applicant to apply for stay of execution before this Honourable court. In respect of the said ruling he further informed the court that the attitude of the applicant so far was tantamount to exercising her constitutional right of appeal and not disobedience to the order of this Honourable court. He then referred this Honourable court to paragraph 27 of the first affidavit and paragraphs 2 to 11 of the second affidavit. On this issue he finally urged the court to hold that the attitude of the applicant in this case did not amount to flagrant disobedience of order of the court.

On the 2nd issue

Learned counsel for the applicant submitted that by virtue of Order 3 Rule 8 of Shariah Court of Appeal Rule Cap S.4 laws of Northern Nigeria 2006 gave this Honourable Court unfettered discretion on granting or refusing this kind of application. He therefore urged the court to exercise its discretion in favour of the applicant.

Learned counsel further explained that what they were contesting before the court of appeal was the award of custody. According to him such claim was never before this honourable court. He further elucidated that if judgment was allowed to be executed and the applicant eventually succeeded at the Court of Appeal, it would not only render the judgment of Court of Appeal nugatory but would also amount to injustice on the part of the applicant. He therefore urged the court to accede to their prayers and allow the stay of execution as prayed for.

Learned counsel for the respondent, H.A. Folorunsho, Esq. vehemently opposed the application. He submitted that they filed two separate counter affidavits to the said motions. According to him, the first counter affidavit was filed on 29th March 2010, while the second was filed on 2nd May 2010. In his explanation, he submitted that the first counter affidavit has 18 paragraph averments, while the second counter affidavit has 19 paragraph averments. He further submitted that the two counter affidavits were deposed to by T.A. Aluko, Esq. a learned counsel in the law firm of Y.K. Sa'ad. He finally concluded that they relied on all the averments contained in both counter-affidavits and further prayed the court to refuse the application.

He commended his learned colleague for formulating two issues, which he too would adopt in arguing these motions. He also submitted that he would be taking issues as formulated by his learned colleague.

ISSUE 1

Learned counsel for the respondent, submitted that in the conventional legal system there is this Maxim "that he who seeks equity must do equity". This principle has been in shariah for over 400 years. This simply connotes, whoever wants justice must also do justice in all its ramifications. This according to him is in line with the commandment of ALLAH, the most High. In the Glorious Quran, Allah says: .**(اعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَى)** Be just as justice, is akin to piety".

He further submitted that the basic thing relied upon by the applicant herein was that they had filed several appeals before the Court of Appeal, Ilorin Division with the motive of convincing the court that the applicant was only exercising her constitutional rights.

He further submitted that there was no any appeal before the Court of Appeal, Ilorin Division against any decision of this

Honourable Court. He further submitted that all the papers titled Notice of Appeal attached to their respective motions were only "headed" in the Court of Appeal but was never filed in the said appellate court. They were rather filed at the registry of Sharia Court of Appeal. He explained further that, any appeal to be pending before the Court of Appeal such appeal must have been filed at the registry of the Court of Appeal. He went further to say that any paper that had not been filed and receipted for by the registry of a court could not be said to be pending before such court. He further lamented that the paper, document, or exhibit attached or made available to support or relied upon as evidence of pending appeals at the Court of Appeal, Ilorin Division, were worthless and should be discountenanced.

He then submitted that it would have been a different case if the applicant applied for leave of Sharia Court of Appeal to appeal to the Court of Appeal and such application is brought to this court for that effect According to him, such scenario had not occurred before this court. He concluded that such principle was trite in law and urged the court to discountenance with the following paragraphs of supporting affidavit particularly paragraphs 6,7,8,9,10,11 and 12 stating that all the paragraphs of the second affidavit were opposed by him. He further opposed the second affidavit, especially, paragraphs 6 11 and 15 respectively. He finally urged the court on the first issue to discountenance with all the said paragraphs and prayed the court to decide the first issue in their favour.

ISSUE 2

In reaction to the 2nd issue, the learned counsel for the respondent submitted that the applicant herein was not entitled to stay of execution. He further submitted that any person or litigant who wanted to be accorded respect of the court by granting her prayer must also have respect for the court by complying with the order of the court. According to him, the applicant herein had deliberately refused to obey the order of this honourable court. To him, respect begets respect. He further clarified that throughout the proceedings there was no place where the trial judge awarded the custody of the child in dispute to the father. He further submitted that executing the judgment of this honourbale court would have no negative effect whatsoever on the out come of the appeal if there is any, because the res of this case i.e. child is not a perishable item. God forbid death, which is a natural phenomenon.

The Learned counsel for the respondent further lamented that since year 2002 when the paternity of the child in question was awarded to the respondent herein, the child has since been under the custody of the applicant nothing had happened to the res and no body had ever asserted that the child being there would negate any court procedure. He therefore urged the court to resolve the 2nd issue in their favour.

In his further reaction, the learned counsel for the respondent submitted that the discretion of the court should be utilized judicially and judiciously, as the applicant herein through her attitude did not deserve the exercise of discretionary power of the court in her favour. He then urged this honourable court to resolve the issue before it in respondent's favour.

In his response, counsel to the applicant O.Y.Gobir, Esq. responded on the point of law by submitting that where there was a contentious matter before a court, it was not enough for a counsel to say anything without quoting the law, instead of citing law, the counsel for the respondent just articulated that "**it is trite law**".

On the issue of filing the process he mentioned that each court had its rules and practice and that the rule and practice of Court of appeal was that the Notice of Appeal be filed at the lower court and that it would be after the compilation of the proceedings of the trial court that the whole process would be sent to the Court of Appeal through the trial court. He finally urged the court to hold that the notice of appeal attached to the motion was properly filed.

Having gone through the records of proceedings and carefully listened to both counsel for and against, we will resolve the issue raised in seriatim.

The principle governing application to stay under Islamic law of procedures are fundamentally the same as the principle in English Common Law. In both procedures emphasis is laid on the balancing of the conflicting interests of both parties with fairness and equity as the applicant must not suffer any injustice while the successful party should not be unduly deprived of the fruits of his/her victory. Also it is pertinent to note that the issue of whether to grant or refuse stay under Islamic law is centered around the nature of the res of dispute whether the subject matter of dispute is prone to alteration, perishable or non-depleting object with intention of doing justice to both parties. And whether the outcome of the appeal is not rendered nugatory.

The following are the principles that should guide courts in application for stay of execution.

(i) Ensuring attainment of fairness, equity and justice to both parties

(ii) Recognition that the successful party must not be unduly deprived of the fruit of his victory obtained in the judgment.

(iii) Taking into consideration the mutually exclusive and competing rights of both parties must be well considered.

(iv) Unless a judgment is patently illegal or wrong, there is a presumption of its being correct until the contrary is proved otherwise, the courts will not normally deprive the successful party of the fruits of his victory.

(v) Substantial and arguable ground of appeal is a strong circumstance in favour of granting a stay of execution.

An application for stay of execution cannot be granted as a matter of course, but only based on stringent laid down principles. In the law of this court, which is Islamic law, a court cannot order for stay of execution unless and except the pleading of an applicant shows substantial reasons to warrant depriving of the successful party of enjoying the fruit of his success. The principle that regulates the grant or refusal of an application in this regards stipulate thus:-

لايعقل على أحد شيء بمجرد دعوى الغير فيه حتى ينضم إلى ذلك سبب يقوي الدعوى ... [راجع شرح أرجوزة تحفة الحكام ج1 ص245] .

راجع كتاب : البهجة ج1 ص123 ، وكتاب : فتح العالي المالكي ج1 ص179 ، وكتاب : تبصرة الحكام ج1 ص152 .

There shall be no injunction, order against any party just because of a claim made by the other party, unless the applicant supports his claim with a strong reason". [See Tuhfat Hukkam Vol: 1 P245]. Also see Bahaja Vol. I, Page 128 and Fathul Aahli Malik Vol. I Page 179, Tabshiratu Hukami Vol I Page 152.

This law has been elaborated in common law by A.M. Mukhtar, JSC in the case of NNPC vs Famfa Oil Ltd, and And others (2009) SC. (Pt 1) Page 206 where he observed thus:-

'A well known principle of law governing the

application of a stay of Execution is that Applicant must disclose exceptional or special circumstances to warrant the grant'.

In the instant case, we have no doubt in our mind that the application of the applicant is short of the requirements of exceptional circumstance. And in line with the above, this court being a well constituted court of justice, will not make indulgence in the practice of depriving a victorious litigant of the fruit of her success, unless and except under a special circumstance which the applicant had failed to advance in his affidavit. The only point advanced by the learned counsel alone cannot on its own persuade this court to grant this application because it lacks merit.

Another important question that sailed into our mind is the nature of the subject matter in dispute whether it may deplete or perish before the determination of the appeal before the Court of Appeal, Ilorin Division. There is an Islamic law principle in this regard which stipulates thus:-

Stay of Execution shall be ordered for any subject matter that involves perishable items.	**وكل شيء يسرع الفساد لــه ...**

The stay of execution therefore can only be granted for some perishable matters, which may, unless the order for stay is granted destroy the subject matter of the dispute in one way or the other.

And in the Al-Madawanatul Kubrah Vol. 5 Page 2251. The author says:-

Order of stay are made in respect of res that are subject to the change and depletion.	**وإنما توقف هذه الأشياء لأنها تحول وتزول . ((راجع الدونة الكبري ج 5** ص2251)).

Also in Sharikh Mayyarah Vol. P. 130 the author state thus:-

Where preservation of the subject matter cannot be guaranteed, restraint order of stay would be made.	**يوقف ما لايؤمن تغيره وزوالــه . ((راجع شرح ميارة القاسى،**

ج1 ص 130))

With all the above quoted laws added together, we opined that where a judgment involves human being an item that is not ordinarily perishable, the terms upon which the court could grant a stay of execution is easier to determine than in other judgments where the subject matter is prone to instant alteration or perish ability.

We therefore see nothing wrong in refusing this application because the res in dispute is a human being who is not subject to instant perishability. Based on the foregoing principles of Islamic law, we observe no reason why this judgment's execution should be stayed because the counsel has not convinced the court that the subject matter of this application, i.e. the child in question is perishable or can be destroyed before the determination of the appeal before the court of appeal, Ilorin Division. In addition, we have neither been shown nor seen what injury, hardship or loss that would be experienced by the applicant if the instant application is refused.

Therefore, having ordered as we did and with circumstance remaining unchanged, we are not predisposed towards the grant of the instant request for requesting us to restrain our previous order in the matter. We feel that our previous order is in order and cannot be changed except and only if it is set aside by the appellate court. More so, Caliph Umar R.A. was reported to have said:-

Definitely, deliberation upon a right, which cannot be executed, has no benefit: see Tabsirat – Hukami Vol. 1 Page 28.	**لا ينفع التكلم بحق لا نفاذ لـــه ...** **(راجع تبصرة الحكام ج1 ص28)**

We disagreed with the submission of the counsel to the applicant that the attitude or conduct of the applicant in this case could not be tantamount to flagrant disobedience of court order and we completely agreed with the submission of the counsel to the respondent that "He who seeks equity must do equity" the consequence of the applicant's failure to obey the court's order tantamount to nothing but flagrant disobedience to the order of the well-constituted court. We can say straight away that we are in no doubt whatsoever, that the conduct of the applicant depicts rudeness, lawlessness and defiance to the judgment of a well constituted court by refusal to affiliate the child in dispute to his legal father for almost eight years from the record. The applicant

has been using judicial process to oppress the respondent in their matter.

It is a long established law that in determining whether to stay or refuse the conduct of the applicant must be taken into consideration. The applicant must come into equity with clean hands and if, therefore, she is in breach as the present case has shown she will not be granted the stay. Accordingly, the applicant will not succeed in her demand for stay if she is unwilling to carry out her own obligation see: **Afrotech Technical Services Nig Ltd, vs Mai and Sons Ltd and Anor (2000) 4 NSCQR 379.**

We are of the opinion that the applicant is applying for stay as delaying tactics to abort the order given against her by this honourable court. This court would not use its discretionary power to grant stay of execution to an applicant whose manifest intention is to foil our previous order. We are thus of the firm view that granting order of stay in this circumstance will fly against the dictates of reason, since the respondent is the judgment creditor, such an instance will be akin to an adjudged trespasser in a land matter being granted an order for stay of execution to continue his act of trespass.

In another development, the counsel to respondent opposed paragraphs 6,7,8,9,10, 11 and 12 in the first affidavit and 6, 11 and 15 in the second affidavit respectively and urged the court to discountenance them. We are not in support of the above submission. It is our humble view that if the substantial part of the paragraphs or pleadings is discountenanced, there will be nothing left to the court to decide. We will therefore treat each paragraph on its merit.

On whether the applicant had properly filed her application at the appropriate registry or not, stay of execution is not automatic nor is it compulsory for a court to grant an order for stay of execution simply because an appeal has been filed in any appellate court. Therefore, the argument whether the case has been filed properly before the court of appeal or not is a non-issue. In our humble view the point is irrelevant and the counsel who raised it in his submission has gone out of the track.

> We completely agreed with the submission of the counsel for the respondent where he dismissed the submission of the learned counsel for the applicant where he conspicuously articulated that the court had never awarded the custody of the child in question to the respondent.

We opine that what determines the jurisdiction of the court is well settled in a cause before it. The jurists stipulate thus:-

> It is well settled principle of the constitution of the proceedings that jurisdiction of the court is determined by the cause of the action of plaintiff as endorsed on the writ of summons.

In view of the above law, careful and meticulous perusal of the judgment of this court will leave no one in doubt that this court did not order such a thing. The exact thing that the court said can be found at page 12 of the said judgment: thus:-

> In the light of the above, we hereby order the appellant to produce the child in dispute and make same available to our court registry within two weeks from today 17th February, 2010 for proper affiliation to the legal father. However, the custody of the child in question shall become an issue when the due processes are followed.

The question to be asked at this juncture, is can it be said in the light of the above that this honourable court has derailed from its jurisdiction by giving its judgment in respect of the issue before it ? Our learned brother will answer this question without any hesitation in the negative. Above all, it is equally relevant from the provision of Order IX Rule 1 of the Sharia Court of Appeal, which elaborates that even if contrary happens with intention of doing justice in the matter does not mean that the court has gone out of her jurisdiction. The said order states thus:-

> The court may in its discretion make an order within its powers and jurisdiction which it considers necessary for doing justice whether such order has been asked for by any or not.

We hold that this argument therefore completely lacks any merit and same is hereby overruled accordingly.

On the whole having dismissed all the points raised by the applicant, we opined that the application ought to be dismissed for lacking in merit and it is hereby dismissed. Therefore, as it stands the ruling of this court is still valid, subsisting and binding on the applicant, as this honourable court has not granted the request of the applicant.

Order:

The Area Court Grade III is hereby order to execute the judgment as it is in our previous decision.

Application fails.

SGD	**SGD**	**SGD**
S.M. ABDULBAKI	**I.A. HAROON**	**A.A. IDRIS**
KADI	**KADI**	**KADI**
21st May, 2010	**21st May, 2010**	**21st May, 2010**

IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIA,
IN THE SHARIA COURT OF APPEAL OF ILORIN JUDICIAL DIVISION
HOLDEN AT ILORIN ON THE 14TH JUNE, 2010
2ND RAJAB 1431 A.H.

BEFORE THEIR LORDSHIPS

I.A. HAROON - HON. KADI S.C.A.,

S.O. MUHAMMAD - HON. KADI S.C.A.,

A.A. IDRIS - HON. KADI S.C.A.,

MOTION NO: KWS/SCA/CV/M/IL/14/2010

BETWEEN:-

ALHAJA SALIMATA & 6 OTHERS - APPLICANTS

VS.

ALHAJI ABDULKADIR YUSUF -RESPONDENT

PRINCIPLE:

He who withdraws his case puts an end to it.

RULING: WRITTEN AND DEVLIERED BY I.A. HAROON

This is a Motion on Notice filed by the applicants dated 7th June, 2010 and filed same day. The motion was seeking for an order of this court to expunge from the record a paragraph which did not form part of record of 13th May, 2010 or such was not read to the parties and their counsel.

The motion was slated for hearing on Monday the 14th day of June, 2010, the applicants' counsel, A.H. Folorunsho Esq., made an oral application that based on the recent development of the substantive appeal that gave to the motion, he said they have decided to withdraw the motion and urged this Honourable Court to so hold.

The respondent counsel, Barrister Yusuf .F. Zubair with him S.T AbdulWahab (Mrs.) raised no objection.

In view of the above development as submitted by the learned counsel to the applicants who orally applied for withdrawal and for non opposing the prayer from the respondent's counsel, this, on our part, the applicant by our law "Is he who withdraws his case put an end to his case".

In view of the above, the application is hereby struck out.

SGD	**SGD**	**SGD**
A.A. IDRIS	**I.A. HAROON**	**S.O. UHAMMAD**
KADI	**KADI**	**KADI**
14/6/2010	**14/6/2010**	**14/6/2010**

IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIA,
IN THE SHARIA COURT OF APPEAL OF ILORIN JUDICIAL DIVISION
, HOLDEN AT ILORIN ON THURSDAY 24th JUNE, 2010
12TH RAJAB 1431 A.H

BEFORE THEIR LORDSHIPS:

I. A. HAROON - AG. GRAND KADI, S.C.A
A. K. ABDULLAHI - HON. KADI
S. O. MUHAMMAD - HON. KADI.

MOTION NO. KWS/SCA/CV/M/IL/10/2010.

BETWEEN

ALH. ISSA ALABI USMAN - APPLICANT

AND

ALH. SALIHU KAREEM - RESPONDENT

PRINCIPLE

Any case/matter being determined in accordance with Islamic personal law in the lower court falls within the Sharia Court jurisdiction by virtue of Section 277 (2) (e) of the Constitution of the Federal Republic of Nigeria 1999.

BOOKS, AND STATUES REFERRED TO:

1. Order 9 & 1 Sharia Court of Appeal Rules.
2. Section 11 of Sharia Court of Appeal Laws.
3. Section 277 (2) of Constitution 1999.

RULING: (WRITTEN AND DELIVERED BY A. K. ABDULLAHI)

This motion is brought pursuant to Order 9 R 1 of the Sharia Court of Appeal rules and Section 11 of the Sharia Court of Appeal Law. The Applicant is seeking for the following orders as contained in his motion papers:-

1. **"AN ORDER** arresting the ruling of this Honourable court in Case No. **KWS/SCA/CV/M/IL/02/2010** to be delivered on a date due to be fixed by this honourable court.
2. **AN ORDER** striking out / or dismissing Suit **NO: KWS/ SCA/CV/M/IL/02/2010** for want of jurisdiction.

3. **AND** for such further or other order(s) as this Honourable Court may deem fit to make in the circumstances".

The motion is supported by eight paragraph affidavit deposed to by the applicant Alh. Issa Alabi Usman. There are two annextures tagged exhibit AA1 and exhibit AA2 respectively. The respondent **Alh. Saliu Kareem** also filed a 10 paragraph counter affidavit with one annexture tagged exhibit R 1. Before us, on 24/6/2010 when the matter called for hearing, Mr. Kabir Abdul-Azeez Esq. and Chief D. O. Bello Esq. appeared for the applicant, while Mr. Y. A. Dikko Esq. holding the brief for Mr. Manzuma Issa Esq. appeared for the respondent.

Having carefully listened to the very brilliant submissions of the two counsels to both parties, and having also perused all the cited authorities in support of their illuminating submissions for their respective clients; we are of the firm view that this Honourable Court has jurisdiction to hear and determine this case No. **KWS/SCA/CV/M/IL/02/2010** for the following reasons:-

This case is an inheritance case emanating from the property of a deceased Muslim person, and all the parties involved are Muslims. From the available evidence before us, part of the disputed land from where Case **No. KWS/SCA/CV/M/IL/02/ 2010** emanated were shared while parts are yet to be shared between the two (2) parties in this case. By virtue of Section 277 (2) (c) of the Constitution of the Federal Republic of Nigeria 1999, we have no iota of doubt to hold that this Honourable Court has jurisdiction and we so hold.

There is no dispute between the two (2) parties in this application that Case No. **KWS/SCA/CV/M/IL/02/2010** is an allegation/accusation of non compliance by the applicant with the previous orders of this court, and when the applicant was first brought for contempt, the applicant never raised the issue of jurisdiction of this court. It is therefore a surprise that after we had heard and written our judgment on the second contempt case against the same applicant that he now thought it fit to arrest the reading of that

judgment. We therefore agree with the learned counsel to the respondent that this application is an abuse of court processes and we so hold.

Finally, by virtue of Section 277 (2) (e) of the Constitution of the Federal Republic of Nigeria 1999, any case/matter being determined in accordance with Islamic personal law in the lower court falls within the jurisdiction of this Honourable Court, this case is no exception.

We are therefore fortified with the above constitutional provisions to hold that this application has no merit, and it is hereby dismissed.

SGD	**SGD**	**SGD**
(S.O. MUHAMMAD)	**(I. A HAROON)**	**(A. K. DULLAHI)**
HON. KADI,	**AG. GRAND KADI,**	**HON. KADI,**
24/06/2010	24/06/2010	24/06/2010

IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIA,
IN THE SHARIA COURT OF APPEAL OF ILORIN JUDICIAL DIVISION
HOLDEN AT ILORIN ON THURSDAY, 24TH DAY OF JUNE, 2010
12TH RAAJAB 1431 A.H.

BEFORE THEIR LORDSHIPS:-

I. A. HAROON - AG. GRAND KADI
A.K. ABDULLAHI - HON. KADI
S. O. MUHAMMAD - HON. KADI

MOTION: NO. KWS/SCA/CV/M/IL/02/2010

BETWEEN

ALHAJI SALIU KAREEM - APPLICANT

VS

ALHAJI ISSA ALABI - RESPONDENT

PRINCIPLES:

1- Whoever is contemptuous to a judge is to be disciplined, the same applicable where he ridicules a witness or his litigating partner

2- Gravity, nature of punishment and manner vary depending on the offence, big or small.

BOOKS, STATUTES REFERRED TO:

1) Yekin A. Abbas & 3 or Vs A. R. Magaji & 3 (2001) 7 SC part 2 P. 45 at 56 – 57.
2) Igbi Vs state (2000) 2 SC p.57 at 91
3) Guide to advocates (Translation and Commentary on Tuhfatul Hukkam by Abbas Abdullahi Machikn P. 21
4) Fatihu Al –Ali al Maliki Page 293 -314.
5) Tuhfat – Hukam P. 6
6) Order 111 R 7 (2) (g) SCA Rules
7) Order V R1 S C A Rules.

RULING: WRITTEN AND DELIVERD BY S. O. MUHAMMAD.

This Motion on Notice was brought pursuant to Order V Rule 1 of the Sharia Court of Appeal Rules and under S. 10 (1) and (2) of the Sharia Court of Appeal Law. The applicant was Alhaji Saliu Kareem represented by Manzuma Issa Esq. while the respondent was Alhaji Issa Alabi Usman represented by Kabir Azeez Esq.

The motion, which was supported by 12 – paragraph affidavit prayed for the following orders:

1. An order committing the respondent to prison for willfully flouting the injunction and/or order of this Hon. Court restraining the Respondent from doing anything on the land situate at Idi –Ogede Village, Ilorin. (sic)
2. An order directing the Upper Area Court, Omu –Aran to proceed forthwith with the hearing of the substantive case pending before it. (sic)
1. And for further order (s) as the Hon. Court may make. (sic)

The first paragraph of the affidavit in support of the application introduced the applicant as being very familiar with the facts of the case and also facts stated in the affidavit. The remaining eleven paragraphs concentrated on how the respondent was sabotaging judicial process to frustrate hearing of the case of inheritance instituted by the member of Usman family at the Upper Area Court, Omu-Aran. The 5 No. exhibits which accompanied this motion, were adequately referred to in the affidavit to buttress the family's contention.

Exhibit A 1 referred to in paragraph 3 was the ruling of the Upper Area Court, Omu- Aran dated 10/9/2008 in a case of inheritance between the two parties, - the applicant and the respondent – where the court stayed its own proceedings on the orders of the High Court, Ilorin judicial Division presided over by Hon. Justice H. O. Ajayi and dated 22/7/2008.

Exhibit A 2 referred to in paragraph 4 was the Sharia Court of Appeal ruling dated 17/6/2005 where we granted injunction against the respondent and restrained him " from further selling, developing or giving out any part of the land till the substantive suit is decided"

Exhibit A3 also referred to in the same paragraph 4 of the affidavit in support was also the Sharia Court of Appeal ruling dated 9/8/2006 where we held that "……. The applicant has failed to convince us that the respondent was liable to be committed to prison…"

Exhibit A4 was Civil Sermons dated 17/7/2008 issued by the Area Court (Grade 1 NO .3) Adewole, Ilorin in the civil case between the respondent (as the plaintiff) and the

applicant as the defendant. The claim in the summons was “Court Assist (sic) to restrain the deffendant (sic) from surveying family’s land” This exhibit was referred to in the 8th paragraph of the affidavit in support of the motion

Finally, exhibit A5, which was referred to in the 9th paragraph of the affidavit, was the order of the High Court referred to supra. This order was intended to show that the High Court never ordered stay of proceedings before the Upper Area Court, Omu-Aran. Rather the order affected only part ‘B’ of the land and NOT parts ‘A’ and ‘C’ as the case may be.

Meanwhile, the respondent, filed 10-paragraphs Counter- affidavit accompanied by 2 No. exhibits: exhibit L1and exhibit L2.

All the paragraphs of the counter affidavit, especially paragraphs 4-7, were used to deny the allegation of sale, alienation or development of any of the land in dispute and to establish a fact that he had purchased and developed category ‘A’ part of the land from the previous owners before the Sharia Court of Appeal ruling of 7th June, 2005.

On the 2 No. annexures, exhibit L1 was a photocopy of land agreement dated 15/3/1999 between one Alhaji Habib Baba Elepo of Eleran Compound, Ilorin as vendor and the respondent as purchaser. The dimension of the land purportedly situate at Ologede Area, Olunlade, Ilorin was 247ft x 246ft x 154ft x 157ft. The consideration for the land was put at One Hundred and Fifty Thousand Naira only (₦150,000.00K). The document was duly signed by both the vendor and the purchaser (the respondent) including their two witnesses each and prepared by Joseph S. Bamigboye Esq. of J.S. Bamigboye and Co. Legal praqctitioner, Kulende Estate, Ilorin.

Exhibit L2, on the other hand, was also a land agreement dated 19/1/2004 between one Mallam Saliu Adekanye (for and on behalf of Saliu Adekanye Family) as vendor and the respondent as purchaser. The actual dimension of the land purportedly situates, lying and being at Idi-Ogede village, Olunlade area, Ilorin was not stated. What the agreement contained was that it was a "piece" or parcel of land including the uncompleted building thereon…"

However, the consideration for the land was stated as Two Hundred and Fifty Thousand Naira only (₦ 250,000.00K) The document was duly signed too by both the vendor and the purchaser (the respondent) including their two withnesses each and prepared by Kabir Azeez Esq., legal practitioner, Alheri Chambers, Kulende Estate junction, Ilorin.

On the 31st March, 2010 when this motion came up for hearing before us. Manzuma Issa Esq., counsel for the applicant made an oral application urging us to visit the locus inquo first before hearing of the motion proper could commence. He gave his reasons, councel to the respondent Kabeer Azeez raised. objection to the application and also gave his reasons too. Manzuma Esq., once again persuaded us to accede to his request which we overruled by deciding to visit the locus, if need be, only after we had heard the Motion on Notice. There and then hearing of the motion commenced.

The learned counsel to the applicant introduced his motion and submitted that he relied on both the 12-paragraph affidavit in support including reliance on the 5No. annextures adequately described supra. He urged us to discountenance the 10-paragraph counter-affidavit filed by the respondent in addition to the 2 No. annextures i.e Exhibits L1 and L2. The learned counsel to the applicant submitted that his client instituted a suit against the respondent since 2003 for distribution of an inherited land at Idi-Ogede village, Olunlade Area, Ilorin among the heirs of one late Alfa Usman but that the case had suffered delay at the instance of the respondents who implored all tactics to make sure that hearing of the case went at snail's speed. He referred to Exhibits A2 where our court ordered accelerated hearing but which could not be realized or actualized as a result of disobedience of the respondent. He submitted further that it was as a result of this attitude that the applicant filed another motion before this same court to commit the respondent to prison for flouting our orders.

The outcome of this motion, was exhibit A3 where he submitted that he repeated our ruling for accelerated hearing only and not committing the respondent to prison as prayed.

On exhibits A1 and A5, the learned counsel to the applicant submitted that the High Court had no power to stay the proceedings of a Muslim case governed by the Islamic

personal law. He added that his client was not a party to the case instituted by the respondent on behalf of their family at the High Court where exhibit A5 emanated. He therefore wondered how exhibit A5 could be effective. Throwing more light into this matter, the learned counsel submitted that the whole parcel of land had been divided into three, parts, 'A', 'B' and 'C'. According to him part 'A' was in dispute between the applicant and the respondent. Part 'B' was before the High Court where the applicant was not a party, while part 'C' was the part agreed by the respondent to be shared along with the applicant and the other heirs of the land. The respondent, according to the counsel also frustrated even sharing of this undisputed part 'C'. For the totality of all these, the learned counsel urged us to commit the respondent to prison for disobeying the order(s) of this court not to continue to tamper with the land and for using court process to frustrate the order of accelerated hearing. He concluded by submitting that the Holy Qur'an warned against disobeying the constituted authority adding that Allah did not make a distinction between one authority and another. Therefore, he submitted the authority regarding court of Justice was absolute and it must be obeyed.

In his own submission, the learned counsel to the respondent viewed this motion as a - kin to being a criminal charge which has its distinct rules to be applied in its hearing. He referred us to the Supreme Court Judgment in Yekini .A. Abbas and 3 others Vs. A. R. Magaji and 3 others (2001) 7 SC part 2 p.45 at pages 56 – 57 and another Supreme Court Judgment in Igbi Vs. State (2002) 2 SC p.57 particularly at page 91. According to him, the two Judgments point to the fact that for this type of application to be successful, the proof required by law from the applicant is proof beyond reasonable doubts.

The learned counsel to the respondent submitted further that in all the paragraphs of the affidavit in support of the motion including all the cxhibits, there was nothing to convince our Court that the respondent had willfully flouted our injunctions. He added that to convince this court that the respondent had done so intentionally and deliberately, the application must be specific showing as part of the exhibits for instance, a picture of a house built on the land. The learned counsel also queried paragraphs 4 and 5 as

speculative, which a court of justice cannot work with or rely upon. He said that paragraph 4 of the respondent's counter affidavit has denied these two paragraphs accordingly and this has remained so unchallenged. Also remaining unchallenged were paragraphs 5 and 6 of the counter affidavit including exhibits L1 and L2, which indicated that the respondent purchased part 'A' of the land in dispute from the former owners.

On the second prayer, the learned counsel for the respondent submitted that the prayer was totally misconceived. According to him, the appropriate thing for the applicant was to have appealed against exhibit A1 and not to lump it with this motion.

On the submission of the learned counsel to the applicant on exhibit A5, the learned counsel to the respondent submitted that the order in the exhibit had also been misconceived. This was so, according to him, because the parties in the High Court case were different while the claim too was different. It had nothing to do with inheritance.

On the Qur'anic authority cited by the learned counsel to the applicant, the learned counsel to the respondent submitted that the authority cited cannot help in this application because, according to him, the citation was not specific; therefore, it was totally irrelevant.

On the whole, the learned counsel to the respondent urged us to refuse all the prayers and to dismiss the motion for lack of merit.

Replying on point of law, the learned counsel to the applicant opined that both paragraph 5 of the affidavit in support and paragraph 5 of the counter affidavit clearly manifested the respondent's intention to flout the injunctions of this court. He also submitted that the two Supreme Court cases cited by the learned counsel to the respondent were irrelevant to this application. He added that all the submissions of his colleague on the other side were based on technicality which, according to him, cannot guide this court to arrive at a just decision. Furthermore, he submitted that on the second prayer, attachment of exhibit A1 was to demonstrate the magnitude of disobedience to the order(s) of this court only.

Finally, he urged us to revisit the locus in quo in view of their various submissions and to allow his application thereafter.

Having listened to both parties, we thought we could give our ruling on 28th/4/2010 and we so adjourned. But during conference held on this matter on 6th January, 2010 to decide and agree on which way the ruling would go, we saw the need to revisit the ***loco*** and therefore fixed 15th January, 2010 for the exercise. Both parties and their counsels were to be and they were, accordingly, informed by our registry. On our return to court from the revisit, counsels to both parties made further submissions.

Manzuma Esq, the learned counsel to the applicant submitted that consequent upon the revisit and the observations made by the court, there were enough grounds to commit the respondent to prison for disobeying the order(s) of this court. He submitted further that the respondent did not deny certain facts, which included additional blocks added to the existing fence, which covered the large compound where the grave of their forefather existed; a new mosque painted white outside the compound. Furthermore, the learned counsel submitted that although, the respondent denied ownership of other structures on the land, his consisted defence as contained in paragraph 5 of the counter affidavit was that he bought part 'A' of the land whereas the order of injunction covered all the three parts of the land, i.e. Parts 'A', 'B' and 'C''. On exhibit A2, the learned counsel submitted that the exhibit can only be raised in the substantive case at the trial court. On the order of this court for accelerated hearing at the trial court, the learned counsel to the applicant submitted that the respondent admitted that the order of the High Court affected only part 'B' of the land and not parts 'A' and 'C' adding that the order was being used through the office of the Director of Area Courts to stop proceedings before the trial court on the entire land. He therefore urged us to grant his application.

In response, the learned counsel to the respondent repeated his earlier submission to the effect that an application for committal to prison was in form of a criminal charge which proof shall be beyond reasonable doubt hence the visit to the ***loco.*** He submitted further that although the

applicant was able to point out some alleged developments at the loco, there was no evidence whatsoever, made available to the court to connect the respondent to the new constructions and to any other developments there. Therefore, the applications should be dismissed for that reason.

He buttressed his submission with exhibit A3, on consistence of denial, the learned counsel repeated his earlier submission also to the effect that the facts of purchase of part 'A' of the land by the respondent was not disputed. Therefore the respondent was deemed to be the owner of this part in view of exhibits L1 and L2 attached to the counter affidavit. His final submission on this point was that since the respondent denied ownership of the fresh developments on part 'A' of the land, he cannot be held responsible for those developments.

On exhibit A1, the learned counsel submitted that there was nothing in it ordering a stay of proceedings. Since it was not the Sharia Court of Appeal's proceedings, therefore, the applicant was misconceived and cannot stand. He submitted finally that both paragraph three of the affidavit in support of the applicant's motion and its exhibit A1 were enough to dismiss this application. He therefore urged us to do the same.

When given a second chance to address us, the learned counsel for the applicant submitted that he was before us to enforce exhibit A2 and not exhibit A1.

We took a critical look at the orders being sought by the applicant viz-a-viz the submissions of both counsels for and against the application. We also studied all the exhibits annexed from both sides and decided to attend to the application from the following perspectives.

1. We examined exhibit A1against exhibit A5 and observed that whereas exhibit A1 was a proceedings and ruling of Upper Area Court Omu-Aran sitting in Ilorin on a case governed by Islamic personal law, via our order in exhibit A3, the suit which prompted exhibit A5 was not governed by it in view of the parties involved; although the order given in the exhibit affected the same subject matter which was the land in dispute situate at Idi-Ogede village.

In addition, another look at the parties involved in exhibit A5 showed that the applicant before us now was not a party in the suit. In view of this, we strongly held the opinion that there was no confusion or ambiguity regarding the two exhibits. They were two distinct entities but with a common subject matter. Therefore, exhibit A5 cannot be and certainly was not before us and we so hold.

2. We observed that the applicant's first prayer was double edged:
   (a) To commit the respondent to prison for willfully flouting our orders contained in both exhibits 2A and 3A and
   (b) To (still) restrain the respondent from doing anyting on the land situate at Idi-Ogede village.

On (a) above we appreciated the intelligent submissions of the counsels to both parties. We took judicial and judicious notice regarding unnecessary delay in carrying out our repeated orders of accelerated hearing by the trial court as contained in exhibits A2 and A3 which the learned counsel to the applicant submitted was due to disobedience of the respondent through different court cases aimed at frustrating these orders. He drew our attention to exhibits A4 and A5 as examples. We also took similar notice of the submissions of the respondent's counsel to the effect that this application was akin to being a criminal charge with distinct rules to be applied in its hearing. We equally appreciated all the Supreme court authorities citied to buttress his submissions. On this latter submission, we held that the issue of disobedience to our orders, if confirmed by necessary evidence could be punished by us because we have powers to do so under the provisions of contempt of court in islamic law. For instance, Tuhfatul-Hukkam provides as follows:

ومن جفا القاضي فالتأديب أولى ، وذا لشاهد مطلوب

Meaning:

Whoever is contemptuous to the judge is to be disciplined; the same applied where he ridicules a witness or his litigating partner, (see p.21) of Guide to Advocates a translation and commentary on Tuhfatul Hukkam by Abbas Abdullahi Machika)

Regarding the nature or type of discipline to be meted, pages 293 – 314 of Fathul Aliy Al -Malik shed some light:

منها ما هو مقدر ومنها ما هو غير مقدر وتخلف مقاديرها وأجناسها وصفاتها باختلاف الجرائم وكبرها وصغرها .....

Meaning:

….. some are fixed and some not fixed. Their gravity, nature of punishment and manner vary depending on the offence, big or small…..

However, our eagle-eye observation and our instant reaction to this same issue as canvassed by the learned counsel for the respondent through exhibits L1 and L2 was that, throughout the proceedings in this application, there was no where the respondent was directly connected with any construction or development regarding the disputed land especially with all the fresh developments on part 'A' of the land complained of.

Since it is trite under Islamic law that the onus of proof rests with the complainant/applicant, and since the allegations contained in this application have not been proved by the applicant through necessary evidence known to Islamic law, it would amount to injustice to connect the respondent with all the fresh developments in this land so far. Therefore it would be unfair to punish him for contempt for that matter and we so hold.

We therefore resolved this issue of contempt in favour of the respondent who argued in this direction.

On the (b) part of the first prayer i.e. restrain the respondent from doing anything on the land, we were constrained to invoke all the powers we have to ensure that our orders now and in future, especially as it affected this case, were no more flouted directly, indirectly or tactically by either of the two parties before us in particular or/and by any other person or persons in general who may be, in one way or the other, connected with this land. To achieve this we had to, and we did invoke some of our orders as follows:

(i) Tuhfatul Hukkam (page 6) provides that:

منفذ بالشـرع للأحكام لـه نيابـة عن لإمـام (راجع : تحفة الحكام ، ص6).

The Islamic law judges have power of enforcement for, they are by their position acting on behalf of the appointing authority.

(ii) Order III Rule 7 (2) (g) of the Sharia Court of Appeal Rules provides:

> The court shall not normally re-hear or re-try the case but … may…. Do or order to be done anything which the court below has power to do or order.. (emphasis ours)

(iii) Order V Rule 1 of the same Sharia Court of Appeal Rules provides:

> The court may direct that any judgment or order given by it shall be enforced by the court……

Relying on these powers, we took time on 11th May, 2010 to revisit the ***loco*** in company of both parties and their counsels to, and we did make marks on the existing structures found on the part 'A' of the land and on the vacant pieces of land also found therein with a view to taking far reaching decisions on this matter.

We also saw and took judicial and judicious notice of part 'B' and 'C' of the land, which were referred to in paragraphs 5, 6 (i) and 9 in the affidavits in support of the motion under consideration. The visit lasted for two hours only 9.00 – 11.00 am or thereabout. We did not however tamper with part 'B' and part 'C' of the land. The reason was that while part 'B' was a matter pending in the High Court from where exhibit A5 emanated, part 'C' was not in contention as both parties agreed on its status quo ante.

Our markings are hereby reproduced as follows:

1. -- The fence of a big Mosque marked A1
2. -- Another mosque (beside A1) painted white beside which were two buildings fence marked A2.
3. -- A residential house with NASFAT gate, fence plus 2 No. shops at roofing level (11 blocks only) marked A3.
4. -- One storey building roofed only and not plastered

marked A4

4a. – Virgin land and undeveloped marked A4 (A)

5. – Ajirotutu house plastered only marked A5

6. -- A building behind A5 unplastered marked A6

7. – An uncompleted building beside A5 marked A7.

8. – Virgin land infront of A7 marked A8.

8 (a) – Fence under construction (6 blocks only) marked A8 (A).

9.— A fence building. The fence is 9 blocks high marked A9.

10.— An uncompleted building 11 No. blocks high marked A10.

10 (a). – Low fence 2 No. blocks high marked A10 (A).

11.—2 No. roofed but unplastered shops marked A11.

12. – A building under construction roofed but not plastered behind A11 marked A12.

13.— An unroofed building behind A12 marked A13.

14.— a building roofed behind but not plastered beside A11 and A12 marked A14.

15.— A building behind A14 half plastered marked A15.

16.— A building with 2 No. shops and a living room opposite Part B of the Part 'A' land marked A16.

17. An uncompleted building beside A16, 11No. blocks high marked A17.

17(a) — Virgin land between A16 and A18 marked A17 (A).

18.— A roofed but unplastered building behind A16 marked A18.

In view of this exercise, we hereby repeat our order for the last time, as contained in exhibit A2 that the respondent in particular, and now, the applicant in this case, by themselves, agents, servants and privies are hereby restrained from entering, constructing or in any way tampering with any part of the land situate at Idi-Ogede village pending the determination of the substantive suit before the Omu-Aran Upper Area Court sitting in Ilorin in suit No. UACO/CVFM/5M/07 dated 8/8/2008.

We resolved this with the hearing of the substantive case pending before it, it was our contention that to give prayer in favour of the applicant.

3. On the applicant's prayer to order Omu-Aran Area Court to proceed forthwith this order in the present circumstance would amount to repeating ourselves – abuse of court process – which no court of record should condone.

Finally, we warn, seriously, that the contents of this ruling should be digested very well and complied with by both parties before us because any violation of the orders contained therein shall not be treated with kid gloves if the matter is brought before us again with clear evidence to that effect. The duty of any court of law worths the name is not to work and act by speculations but by the facts proved in accordance with the relevant laws.

In conclusion, we hereby refuse the prayer of the applicant to commit the respondent to prison because the application could not be sustained with clear proof as required by Islamic law. However we hereby repeat our order that the respondent and even the applicant in this case, by themselves, agents servants and privies are hereby restricted from entering, constructing or in any way tampering with any part of the land situate at Idi-Ogede village pending the determination of the substantive suit before the Omu-Aran Upper Area Court sitting in Ilorin in suit No. UACO/CVFM/5M/07 dated 8/8/2008.

The motion therefore succeeds in part and fails in the other part.

SGD	**SGD**	**SGD**
S.O. MUHAMMAD	**I.A. HAROON**	**A.K. ABDULLAH**
HON. KADI	**AG. GRAND KADI**	**HON. KADI**
24/06/2010	24/06/2010	24/06/2010

IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIA
IN THE SHARIA COURT OF APPEAL OF ILORIN JUDICIAL DIVISION
HOLDEN AT ILORIN ON 10TH JUNE, 2010
28TH RAJAB, 1431 AH.

BEFORE THEIR LORDSHIPS:

A.K. ABDULLAHI	**-**	**HON. KADI**
A.A. IDRIS	**-**	**HON. KADI**
S.M. ABDULBAKI	**-**	**HON. KADI**

MOTION NO: KWS/SCA/CV/M/IL/12A/2010.

BETWEEN:

ATTAIRU GBADAGUN - APPLICANT

AND

ZENABU MANKO - RESPONDENT

PRINCIPLE:

When the court sees the merit in an application ex-parte, such application would be granted.

RILING: WRITTEN AND DELIVERED BY A.K. ABDULLAHI

The applicant, Attairu Gbadagun filed an ex-parte motion through his counsel M.J. Dagana for substituted service. The motion dated and filed on the 7th day of June, 2010 and brought pursuant to Order 9 of Sharia Court of Appeal Rules. On the 10th June, 2010 when the case came up for hearing the counsel to the applicant submitted that the order directing the notice of appeal, motion on notice and all other court processes in connection with this appeal be served on the respondent by way of substituted service through her counsel or village Head of Emikisim via Lafiagi where the respondent is known to have been domicile.

On our part, having heard the submission of the learned counsel in this application ex-parte, we see merit in the application and it is hereby granted as prayed.

SGD	**SDG**	**SDG**
S. M. ABDULBAKI	**A. K. ABDULLAHI**	**A. A. IDRIS**
KADI	**KADI**	**KADI**
10/06/2010	**10/06/2010**	**10/06/2010**

IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIA,
IN THE SHARIA COURT OF APPEAL OF ILORIN JUDICIAL DIVISION
HOLDEN AT ILORIN ON TUESDAY 13TH DAY OF JULY 2010.
2ND SHABAAN 1431 A.H

BEFORE THEIR LORDSHIPS:-

S.O. MUHAMMAD - KADI, S.C.A

A. A. IDRIS - KADI, S.C.A

S.M. ABDULBAKI - KADI, S.C.A.

MOTION NO. KWS/SCA/CV/M/IL/15/2010.

BETWEEN

ATANDA TAIYE - APPLICANT

VS

KUBURATU TAIYE - RESPONDENT

PRINCIPLE*:*

For any person who is summoned by the judge (court) to appear in court and evades and goes into hiding in his/her house or any other place, the judge or his representative shall commit the summons to be served on him/her at where he/she is ordinarily residing such as house, place of business e.t.c by pasting such summons on the door in order to compel him/her to appear in the court*.*

BOOK/STATUTES REFERRED TO:

(1) Ihkamul-Ahkamu `Ala Tuhfatul-Hukam page 12 by Sheikh Moh. Bn Yusuf Al-Kafi.

RULING: WRITTEN AND DELIVERED BY S.O. MUHAMMAD.

This motion exparte was brought under our inherent powers. The applicant was Atanda Taiye represented by Ayodele John Esq. holding the brief of T.M. Onaolapo Esq. The motion dated and filed on 12th July, 2010 was praying for an order for substituted service against the respondent whose last known address was Subaru Baba Maria residence , Oke-Andi Area, Ilorin. The application, supported by 7 paragraph affidavit sworn to by one Hassan Amidu of Ile Eleropupo, Gaa Imam Area, Ilorin.

Arguing the motion before us today, Tuesday 13th July, 2010, the learned counsel for the applicant submitted that he relied on all the paragraphs of the affidavit paragraphs 3, 4 and 5. The 3 main paragraphs are hereunder reproduced for clarity of purpose and as submitted before us by the learned counsel:

1. That all efforts to serve the respondent the court processes proved abortive (sic)
2. That when the court bailiff of this honourable court try to

   served the respondent counsel in person of Mr. Abdul Azeez at Kulende, area, Ilorin, he refused to collect the court processes (sic)
3. That the only means to serve the respondent in this case is by substituted means (sic)

He therefore urged us to grant his prayers as prayed.

Our first reaction to this motion ex-parte was to ask our registry in the open court the efforts made to get the respondent served. On this, Hajia Hassana Mustapah (Assistant Chief Registrar Litigation) addressed us on behalf of the bailiff, Mas'ud Lawal who was on official duty outside the court premises. In her statement the ACR (Litigation) told us that the bailiff went to serve the respondent through her counsel Kabir Azeez Esq. at his Kulende chambers to appear before us on 8th July, 2010 but that the counsel refused to collect the court process on the ground that he had not been briefed on any appeal by the respondent whom he agreed he represented at the trial court. Another effort was made to serve the respondent through her guardian, one Subaru Baba Maria at Oke-Andi, Ilorin. This effort was repeated twice but to no avail. Lastly, Kabir Azeez Esq. (described above) also visited our registry and met with ACR (Litigation) to confirm that he had not seen the respondent for any or/and for further briefings on any appeal in this court.

After listening to our ACR (Litigation), we requested the applicant, AtandaTaiye, who was in court to also address us on this matter. His brief response was that he confirmed all the efforts made by our registry staff.

Consequent upon this development, we had no other option other than to turn to the Islamic law provision on matters of this nature especially as it specifically affected

SUBSTITUTED SERVICE. Sheikh Muhammad Bin Yusuf Al-Kafi, the learned Maliki Law jurist and author of Ihkamul-Ahkam `Ala Tuhfatul Hukam wrote at page 12 of his book as follows:-

For any person who is summoned by the Judge (court)…. to appear in court and evaded and went into hiding in his/her house or any other place, the judge or his representative shall commit the summons to be served on him / her at where he/she is ordinarily residing such as house, place of business etc by pasting such summons on the door in order to compel him\her to appear in the court.	**إن من طلبه القاضي ... لحضور محل فامتنع من الحضور وأخفى في بيته أو غير ها ، فإن القاضي أو من تنزل منزلته يحجز على أهم محل له من دار أو جانوت بأن يجعل على الباب شمعا ، والحكمة في ذلك كي يحضر أو غيره ويطبع عيله بطابع، والحكمة في ذلك كي يحضر جلس القضاء.**

We rely on this authority to grant the prayer of the applicant. We therefore hereby order as follows:-

1. Our registry shall paste a copy of this ruling including a fresh summons within 24 hours from delivery of this ruling at the residence of Subaru Baba Maria at Oke- And i Area, Ilorin for the respondent to appear before us on Tuesday, 20th July, 2010 for the purpose of hearing appeal No.KWS/SCA/CV/AP/IL/16/ 2009 between her and the appellant, Atanda Taiye.
2. The registry shall arrange that at least a court/police orderly should assist to carry out the order of the substituted service.
3. The substantive appeal O.KWS/SCA/CV/AP/IL/16/2009. is hereby fixed for Tuesday 20th July, 2010 for mention/ hearing.

Application succeeds.

SGD	SGD	GDS
S.M. ABDULBAKI KADI 13/07/2010	**S.O. MUHAMMAD KADI 13/07/2010**	**A. A.IDRIS KADI 03/07/2010**

IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIA,
IN THE SHARIA COURT OF APPEAL OF ILORIN JUDICIAL DIVISION,
HOLDEN AT ILORIN ON THURSDAY 15th July, 2010
4TH SHABAAN 1431 A.H.

BEFORE THEIR LORDSHIPS:

A. K. ABDULLAHI - HON. KADI
A.A. IDRIS - HON. KADI
S.M. ABDULBAKI - HON. KADI.

MOTION NO. KWS/SCA/CV/M/IL/12/2010.

BETWEEN

ATTAIRU GBADAGUN - APPLICANT
AND
ZENABU MANKO - RESPONDENT

PRINCIPLE

It is trite law and seriously condemned under the Sharia for a woman to spend a night away from the bed of her husband, without her husband's consent, the angels curse her until she comes back.

Books, and Statues referred to:

1. Sahih Muslim Vol. 11 page 732
2. Order 111 Rule 8 of the Sharia Court of Appeal Rules
3. Section 14 (a) of the Sharia Court of Appeal Law.

RULING: (WRITTEN AND DELIVERED BY A. K. ABDULLAHI)

This motion on notice is brought pursuant to Order 111 Rule 8 of the Sharia Court of Appeal Rules and Section 14 (d) of the Shariah Court of Appeal Law. The applicant Attairu Gbadagun was represented by **M. J. Dangana Esq.** while the respondent **Zenabu Manko** was represented by **Y. A. Dikko Esq**. The applicant through his counsel was praying for the following 3 orders in the following terms, and we quote:-

i. AN ORDER of the Hon. Court staying the proceedings in this divorce action in Suit No. 55/2010 and case No. 183/2010 now pending before the trial Tsaragi Area Court Grade 1. Tsaragi, and also the similar divorce suit now pending before the Lafiagi Upper Area Court, Lafiagi, pending the final determination of this appeal before the Hon. Court.

ii. **AN ORDER** of the Hon. Court staying the sundry orders made in favour of the respondent by Tsaragi Area Court Grade 1 on 17 – 05 – 2010 as contained in the enrolled order of the Court attached herein and which I marked as EXHIBIT 'F'.

iii. **AN ORDER** of the Hon. Court directing the respondent, Zenabu Manko (also known as Aminatu Manko Attahiru), to return to her matrimonial home or, at least, return to her paternal home in order to foster possible grounds for reconciliation amongst the couple AND A FURTHER ORDER that the said Zenabu Manko be produced before this Hon. Court by her Counsel, Wahab Ismail Esq.

The application is supported by 21 paragraphs affidavit deposed to by the applicant himself and the motion is predicated on grounds A – E. There is also a further affidavit of 13 paragraphs deposed to by the applicant's counsel M.J. Dangana Esq. There are exhibit "A" and "B" attached. exhibit "A" – is the fresh writ of summons while exhibit "B" is the fresh application for divorce in the Lafiagi Upper Area Court 1, Ilorin dated 14/06/2010. Though there is no counter affidavit, the respondent's Counsel Y.A. Dikko Esq., was able to file exhibit R 1 through our ruling. Exhibit R 1 is the ruling of the Area Court to the effect that all the divorce cases filed by the respondent before it had been withdrawn and thus struck out.

The counsel to the applicant M.J. Dangana Esq. in his submissions moved in terms of all his motion papers, relied on all the paragraphs of both the supporting affidavit and the further affidavit, the attached exhibits as well as all the grounds in the application. He finally prayed us to grant his application, more so as there is no counter affidavit from the respondent.

In his submission, Y. A. Dikko said though he did not file any counter affidavit he could submit on points of law. He submitted that all the (3) three prayers of the applicant had been taken over by events. On prayers 1 and 2, he submitted that by virtue of exhibit R1 and paragraph 5 of further affidavit of the applicant, all the suits filed by the respondent in both Tsaragi Area Court and Lafiagi Upper Area Court had been withdrawn and struck out. That the court can only stayon an existing order or an existing case. On the 3rd prayer, the

counsel submitted that the court can not make an order against none party to the case. Wahab Esq. is not a party in this case and so no order can be made against him. He cited some authorities to buttress his submission and finally urged us to dismiss the application. M.J. Dangana in his brief reply said all the authorities cited by the respondent's counsel are irrelevant because a fresh step had been taken by the respondent in the Upper Area Court, he urged the court to jettison all the submissions of the learned counsel to the respondent and grant his prayers.

Having listened to the submissions of both counsel, and having carefully perused the motion papers, the supporting affidavit and the further affidavit, as well as all the exhibits from both parties, it is crystal clear that the respondent's counsel did not challenge the following facts as contained in both the supporting and further affidavits of the applicant, to wit:-

a. That the Respondent who is still under an existing marriage left the matrimonial home without the permission of the applicant and started to live with another man of her choice without a valid marriage.

b. That by virtue of exhibit "B" the same divorce suit that was no more in existence before Tsaragi Area Court is still pending before Upper Area Court 1, Ilorin; this is just an attitude of putting old wine in a new bottle.

The attitude of the respondent in this regard is not only an embarrassment but it is seriously condemned by Sharia. To this, the Holy Prophet (SAW) was quoted to have said in SAHIH Muslim Vol. 11 Page 732 as follows:-

Meaning:-

عن أبي هريرة عن النبي صلى الله عليه وسلم قال : (إذا بَاتتِ المرأةُ هاجرةً فِراشَ زَوجِهَا لَعنتِها المَلائكةُ حتَى ترجِعَ) .

"When a woman spends the night away from the bed of her husband, the angels curse her until she comes back"

This court therefore, being a court of substantial justice rather than that of technicalities, deems it proper to order the respondent to return to her paternal home in order to foster possible grounds for reconciliation between her and the

applicant and we so order. We equally order that all processes in respect of exhibit "**B**" before Upper Area Court 1, Ilorin be stopped with immediate effect, pending the determination of the substantive appeal before this honourable court.

We however decline to make an order against counsel Wahab Ismail Esq. and the alleged enticer Nda Sallah because both were not joined as parties to this application.

In the final analysis, we hold that the application succeeds in part.

SGD	**SGD**	**SGD**
(S.M. ABDULBAKI)	**(A. K. ABDULLAHI)**	**(A.A. IDRIS)**
HON. KADI,	**HON. KADI,**	**HON. KADI,**
15/07/2010	**15/07/2010**	**15/07/2010**

IN THE SHARIA COURT OF APPEAL OF KWARA STATE NIGERIA,
IN THE SHARIA COURT OF APPEAL OF LAFIAGI JUDICIAL DIVISION
HOLDEN AT LAFIAGI ON 21ST SEPTEMBER, 2010.
13TH SHAWAL 1431 A.H

BEFORE THEIR LORDSHIPS:

A. K. ABDULLAHI - HON. KADI

A. A. IDRIS - HON. KADI

A. A. OWOLABI - HON. KADI

APPEAL NO: KWS/SCA/CV/AP/LF/07/2010.

BETWEEN:

UMAR NDA SODE - APPELLANT

AND

FATIMA MACHINA - RESPONDENT

PRINCIPLE:

Amicable settlement is allowed under Islamic law.

RULING: WRITTEN AND DELIVERED BY A. K. ABDULLAHI

The appellant, Umar Nda Sode filed an appeal against the decision of the Area Court 1, Tsaragi in the suit No 78/2010 case No 209/209 delivered on 6th October, 2010. The respondent was Fatima Machina.

On the 21st September, 2010 when the appeal came up, the appellant who was present in court sought to withdraw the appeal because the matter between the parties has been resolved amicably.

This court accepted the reconciliation reached by the parties and to withdraw the appeal.

This appeal is hereby struck out.

SGD	**SGD**	**SGD**
A. A. OWOLABI	**A. K. ABDULLAHI**	**A. A. IDRIS**
Hon. Kadi	**Hon. Kadi**	**Hon. Kadi**
21/09/2010	**29/09/2010**	**21/09/2010**

IN THE SHARIA COURT OF APPEAL OF KWARA STATE, NIGERIA
IN THE SHARIA COURT OF APPEAL OF LAFIAGI JUDICIAL DIVISION,
HOLDEN AT LAFIAGI ON 21ST SEPTEMBER, 2010.
13TH SHAWWAL 1431 A.H.

BEFORE THEIR LORDSHIPS:

A.K. ABDULLAHI - HON. KADI
A.A. IDRIS - HON. KADI
A.A. OWOLABI - HON. KADI

APPEAL NO: KWS/SCA/CV/AP/LF/09/2010.

BETWEEN:

MAN YAHAYA NDALIMA - APPELLANT
AND
SARATU MAN YAHAYA - RESPONDENT

PRINCIPLE

Amicable settlement is allowed under Sharia as off silence of claimant puts an end to the litigation.

RULING: WRITTEN AND DELIVERED BY A.K. ABDULLAHI

The appellant, Man Yahaya Nda Lima filed an appeal against the decision of the Area Court Tsaragi in the case/suit no 71/2010 delivered on the July, 2010. The respondent was Saratu Man Yahaya.

On the 21 September, 2010 when the appeal came up, the appellant who was present in court sought for the withdrawal of the appeal because the matter has been settled amicably between the parties.

As a result of the above, the prayer of the appellant was granted and the case is hereby struck out.

SGD	**SGD**	**SGD**
A.A. OWOLABI	**A.K ABDULLAHI**	**A.A. IDRIS**
HON. KADI	**HON. KADI**	**HON. KADI**
21/09/2010	**21/09/2010**	**21/09/2010**

IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIA,
IN THE SHARIA COURT OF APPEAL OF ILORIN JUDICIAL DIVISION,
HOLDEN AT ILORIN ON 22nd SEPTEMBER, 2010
14TH SHAWWAL 1431 A.H.

BEFORE THEIR LORDSHIPS:

S. O. MOHAMMED - HON. KADI
A. A. IDRIS - HON. KADI
S. M. ABDULBAKI - HON. KADI.

APPEAL NO: KWS/SCA/CV/AP/IL/13/2010.

BETWEEN

MR. HAMIDU IBRAHIM - APPELLANT

AND

MRS. MULIKAT HAMIDU - RESPONDENT

PRINCIPLE:

1. It is trite under Islamic law dictum which provides that "whoever decides to abandon his right in any suit shall be left alone, i.e. shall be treated as such".
2. The appeal will be struck out for lack of diligent prosecution.

Books, and Statues referred to:

1. Fawakihu Dawani Vol. 2 p. 220 by Sheikh Ahmed bin Gunam
2. Order V11 Rules. 1 (2) of Shariah Court of Appeal Rules.

RULING: (WRITTEN AND DELIVERED BY S. O. MOHAMMAD)

This appeal was filed by the appellant, Mr. Hamidu Ibrahim on 3rd June, 2010 against the decision of Area Court Grade 1 No. 1 Centre Igboro, Ilorin delivered on the 19th day of May, 2010 in the Case/Suit No: 58/10. The respondent herein is Mrs Mulikat Hamidu.

The appeal was dated 3rd June, 2010 and filed same day. For clarity purpose, we hereby reproduced his four number reliefs being sought from this honourable court which are as follows:

(1) Declaration that the judgment on the custody and maintenance of the children, the trial Court did not base it on the material evidence before it and therefore perversed (sic).

(2) Declaration that the plaintiff had lost her right of custody (sic).

(3) Order setting aside the part of judgment of the trial court on custody and maintenance of the children for been perversed (sic).

(4) Order dismissing the plaintiff/respondent's case on the custody and maintenance of the children (sic)

On the 22nd September, 2010, when the case came up for hearing, the two parties were absent only the appellant's counsel appeared.

This appeal was filed on the 3rd June, 2010 precisely and since that date our registry has been working hard to serve both parties to attend to the appeal but to no avail. At our sitting today 22nd September, 2010, our chief bailiff Ibrahim Salami reported that he could not get the respondent served even through substituted service to Magaji Ile Olugbon, Adifa, Ilorin as ordered by the Court on the 21st July, 2010.

Suleman Tijjani Esq. who appeared before us for the appellant submitted that the appellant seemed to have abandoned the appeal because he was no where to be found. He therefore applied orally that the appeal be struck out, also our chief bailiff Ibrahim Salami reported that he could not get the respondent served.

We viewed this situation as very unfortunate and recourse to the Islamic law dictum which provided that whoever decides to abandon his right in any suit / case or matter shall be left alone, i.e. shall be treated as such.

In view of this provision supported by Order V11 Rule 1 (2) of Shariah Court of Appeal Rules, we had no option other than to strike out the appeal.

We hereby struck out the appeal for lack of diligent prosecution.

SGD	**SGD**	**SGD**
(S.M. ABDULBAKI)	**(S. O. MOHAMMAD)**	**(A.A. IDRIS)**
HON. KADI,	**HON. KADI,**	**HON. KADI,**
22/09/2010	**22/09/2010**	**22/09/2010**

IN THE SHARIA COURT OF APPEAL OF KWARA STATE NIGERIA,
IN THE SHARIA COURT OF APPEAL OF ILORIN JUDICIAL DIVISION,
HOLDEN AT ILORIN ON THURSDAY, 23RD SEPTEMBER, 2010.
15th SHAWWAL 1431 A.H

BEFORE THEIR LORDSHIPS:

A.K. ABDULLAHI	**-**	**HON. KADI**
A.A. IDRIS	**-**	**HON. KADI**
S.M. ABDULBAKI	**-**	**HON. KADI**

APPEAL NO: KWS/SCA/CV/AP/IL/08/2009

BETWEEN:

SULEMAN OMOJIMOH	**-**	**APPELLANT**
AND		
FALILAT JIMOH	**-**	**RESPONDENT**

PRINCIPLE

It is a principle under **I**slamic law that the complainant is the person who can decide to keep silent and when he does, he will be left alone regarding his silence.

BOOKS/STATUTES REFERRED TO:

Fawakihu Dawani Vol. 2 p. 220.

RULING: WRITTEN AND DELIVERED BY A.K. ABDULLAHI

This is an appeal filed by the appellant Suleman Omo-Jimoh against the decision of Area Court 1 No 2 Centre-Igboro Ilorin delivered on the 12th May, 2009 in suit No: C/No 29/2008. between him and Falilat Jimoh (the respondent herein).

The appeal was stated for hearing on the 23rd September, 2010, the appellant's counsel told the court that on the instruction of his client he moved to withdraw his appeal for lack of interest, and in view of the foregoing request, the appeal is hereby struck-out.

SGD	**SGD**	**SGD**
S.M. ABDULBAKI	**A.K ABDULLAHI**	**A.A. IDRIS**
HON. KADI	**HON. KADI**	**HON. KADI**
23/09/2010	**23/09/2010**	**23/09/2010**

IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIA
IN THE SHARIA COURT OF APPEAL OF LAFIAGI JUDICIAL DIVISION
HOLDEN AT LAFIAGI ON TUESDAY 28TH DAY OF SEPTEMBER, 2010
20TH SHAWWAL 1431 A.H

BEFORE THEIR LORDSHIPS:

- **A.K. ABDULLAHI - KADI SCA**
- **A.A. IDRIS - KADI SCA**
- **A.A. OWOLABI - KADI SCA**

APPEAL NO KWS/SCA/CL/AP/LF/06/2010

PRINCIPLES:

1. Divorce by wife on allegation of cruelty
2. Practice and procedure.
3. Jurisdiction - Cases are tried where the defendant resides in respect of immovable and monetary claim.
4. Need to publish jurisdiction of court in the government Gazette. See 19 at Area Court Law Act of 2006
5. Court can correct clerical mistakes in the proceedings.

SUMMARY

The respondent instituted at Tsaragi Area Court an action for divorce for reasons of (a) lack of feeding (b) lack of care and

(c) failure to invite her for conjugal affairs.

The case which was initially heard at Tsaraji Area court was later concluded at Lafiagi area court suo moto by the Judge. The court gave chance to parties to settle but no report of settlement, the court set the case for judgment without hearing evidence from the parties.

The appellant filed grounds of appeal, amongst that the trial court lack teritorial jurisdiction to try him at lafiagi.

BOOKS/STATUTES REFERRED TO:

1. Tabsiratul Hukam Vol.1 pages 36 – 37 & 7f4
2. Ihkamul Ahkam paragraph 26 – 27
3. Section 19 (2) of Area Courts Law Cap,47 of 2006

4. Chief Daniel Awodele Oloba Vs. Issac Olubadun Akereja (1988) SCNJ 56

BETWEEN:

APPEAL NO. KWS/SCA/CV/AP/LF/06/2010

MOHAMMED BABA - APPELLANT

AND

AWAWU MOHAMMED - RESPONDENT

JUDGMENT: WRITTEN AND DELIEVERED BY A.A. OWOLABI

This is an appeal by the appellant against the decision of trial Area Court (Grade 1) which commenced at Tsaragi and the judgment was delivered on 21st day of March, 2010 by Honorable M.B. Yusuf (Judge), at Lafiagi Area Court.

The respondent at the trial court commenced an action by way of petition for divorce against the appellant. The case was mentioned on 19th day of March, 2010 whereby the respondent sought for divorce for the following reasons:-

1. lack of feeding,
2. Lack of care whenever the respondent was sick and their only child of marriage and
3. The appellant was not calling the respondent nor inviting her for sexual affairs to his room.

She lastly alleged that she was forced to marry the appellant.

The respondent denied all the allegations made by the respondent and said: " *I feed the plaintiff and invited her to bed, I take care of her whenever she is sick, I do not want her to divorce me."*

After the case was mentioned it was adjourned to 3rd March, 2010 for continuation and further adjourned for hearing to 13th April, 2010. On 13th April, 2010, the respondent was in court while the appellant was absent and the matter was dully adjourned to 14th April, 2010 for continuation of hearing before the trial court sitting at Lafiagi Area Court this time.

On 14/4/2010 parties were in court and the appellant informed the trial court that settlement was not possible, because one Hussaini, a concubine of the respondent was

disturbing her. The matter was further adjourned to 22nd April, 2010 to allow time for settlement or hearing.

On 22nd April, 2010 both parties were present and the appellant further requested for more time to reconcile with the respondent.

The respondent in turn stated that she had been in the same village, Pututa (puta) where the appellant resides.

The court thereby suo moto adjourned the matter to 23rd April, 2010 for judgment. The trail Area Court Judge on 23rd April, 2010 gave final judgment and granted the relief for divorce on the ground of lack of love between the parties.

The appellant being dissatisfied with the judgment of the trial court which was delivered on 23rd April, 2010 within time filed 3 (three) original grounds of appeal inclusive of omnibus ground.

In the notice of appeal dated 23rd April, 2010, the grounds are:

1. That, the decision of the trial court is unreasonable, unwarranted and cannot be supported due to the weight of evidence adduced before it.
2. That the trial court sat over the matter lacks jurisdiction.
3. That both parties, are from Puta Village under Lafiagi and not under Tsaragi.

The appeal was heard on 21st June, 2010 whereby the appellant raised issue of jurisdiction and further requested for reconciliation with the respondent.

The respondent did not concede to the appeal being allowed but restated her case as was before the trial court.

The respondent alleged that the appellant was not properly feeding her and that the appellant was not properly taking care of her and the only female child of the marriage; Hajia Ramatu, who was five years old. She further stated that she had been patient with the behavior of the appellant until when she could not bear it any longer, thereby she instituted the matter before the area court, Tsaragi, she concluded that she was not interested in reconciliation any longer with the appellant.

The appellant in reply refuted all the claims of the respondent and added that he had two wives and he cared for all of them and their children.

The appellant concluded that they both lived at Puta when the matter was initiated at Area Court, Tsaragi.

After hearing both parties and their explanation in support and against at the appeal, the appeal was adjourned for judgment.

In considering this appeal, the only issue raised by the appellant is the challenge to the jurisdiction of the trial area court sitting at Tsaragi.

We observed on the onset in the cause of writing our considered judgments that various interloping dates appeared in the record of proceedings of the trial court. For proper understanding of the issue this is what appeared on the first page of the record of proceedings;

" IN THE AREA COURT OF KWARA STATE
IN THE AREA COURT GRADE 1 TSARAGI
HOLDEN AT TSARAGI ON THE 27RD DAY OF MARCH, 2010,
BEFORE HON. M.B. YUSUF JUDGE
SUIT NO. 29/2010 CASE NO. 161/201
CAUSE OF ACTION:- PETITION FOR DIVORCED,
19TH DAY OF MARCH, 2010

PARTIES : HAWAWU MOHAMMED BABA VS MOHAMMED BABA

REMARKS:
Both parties are present.

COMPLAINT: The defendant is my husband, he married me about 11 years ago, according to the custom of pututa.

We have a female child, I sue for divorce on grounds of lack of feeding and lack of care whenever myself and or the child is sick. He does not call or invite me for sexual affair to his room.

I was forced to marry the defendant.

CT Deft. – Do you understand the Plaintiff ? What is your answer?

Ans:- I do. I feed Plaintiff and invite her to bed; I take care of her whenever she is sick I do not want her to divorce me.

RULING:- This case is adjourned till 03/03/2010 for continuation

SIGNED
06/04/2010

Plaintiff- Present
Defendant – Absent.

Case is adjourned till 13/04/2010 to enable defendant appear.

SIGNED
13/04/2010

Both parties in court.

Court- Defendant: Why were you not in court on 06/04/2010

Defendant- Court: I was absent because I fell sick

RULING:- This case is adjourned till 04/04/2010 at the instance of defendant, for continuation of hearing before this court sitting at Lafiagi Area Court.

SIGNED
14/04/2010''

Going through the record, the following dates appeared; consecutively but not chronologically;

27th March,2010,
19th March,2010,
3rd March,2010,
6th April,2010,
13th April, 2010,
6th April,2010,
4thApril,2010,
14thApril 2010 and later but not the last
22nd April,2010.

These conflicting dates gave us a lot of concern as to what happened at the registry of our lower court. It is either that the registry of the particular trial court did not properly peruse the record before certifying same or failed to call the attention of the honourable trial Judge to the apparent inconsistencies in the inserted dates. It is our considered view that if same were mistakenly fixed by the honourable

trial judge and in time brought to his attention; same could have been corrected under the inherent power of the court.

The only issue raised before us is that both parties lived at Puta (Pututa) under Lafiagi District, while the respondent instituted the matter at Tsaragi Area Court. It is apparent on the record of proceedings on page 1 that the trial of the matter commenced at Tsaragi Area Court but it was later adjourned for hearing to Lafiagi area court.

It must be noted at the onset that courts which are creatures of the statutes must operate within the framework of such statutes and these statutes have laid down certain conditions for the courts to comply with before exercising that jurisdiction, then unless these conditions are fulfilled it is impossible for the court to assume jurisdiction. The Areal courts in this case and Sharia Court of Appeal in general are no exception to these statutory provisions.

Generally, if a court steps out of bounds of the statutory provisions creating it, it is said to act ultra vires and without jurisdiction. If a court lacks jurisdiction its proceedings in its entirety is a nullity so also to the judgment given under such proceedings.

It is also correct that issue of jurisdiction can be raised at any time whether at trial stage or on an appeal and by the parties or by the court suo moto, see CHIEF DANIEL AWODELE OLOBA VS. ISSAC OLUBADUN AKEREJA(1988) SCNJ 56.

Therefore the issue of jurisdiction of the trial court raised by the appellant against the trial court to entertain the complainant' case was proper and worthy of consideration.

In TABSIRATUL HUKAM VOL. 1 page 74: IBN HABEEB says

وإن كانت الدعوى في حق في الحقوق التي تكون في دمة كالرجل كالدين وما أشبهه فإنما يخاصمه حيث تعلق به.

'If the claim is related to one's right which is redeemable by monetary compensation; a claim of debt and what relate to it, the case would be heard where the defendant could be found'

See also **IHKAM AHKAM paragh.26-27** where it is stated thus :

والحكم في المشهور حيث المدعي عليه في الأصول
والمال معا
وحيـــــث يلقـــيه بما
فـــــــي الزمـــــة
يطالـــــبه وحيث
أصـــــل ثمة

'The popular practice is for the judgment to be delivered where the defendant resides in respect of immovable properties and monetary claim. Whereas in a claim of debt the claimant can sue him in any court in the area where he found him but in the case of immovable property,(like farms, homes and trees) the litigation must take place where ever the property is situated.'

Further more the author of **TABSIRATUL HUKAM VOL. 1** pg.74, restates the position of the law on jurisdiction thus;

إنما تكون الخصومة حيث يكون المدعي ولا موضع المدعي

"The dispute would be properly instituted where the defendant is found /residing. It should not be instituted where the claimant is residing"

Section 19 of Area Court Law of Kwara State 2006 provides for the territorial jurisdiction of all the grades of Area courts thus

Section 19 (2) Area Courts Law CAP,47 of 2006

(2) All civil causes or matter other than land causes shall be tried and determined by an area court which has jurisdiction over the area.

(a) In which the defendant is ordinarily resident; or
(b) In which the defendant was at the time when the cause of action arose.

Sec. 19 of the said law is in consonant with the relevant Islamic law and practice.

It is observed that in compliance with the Area Court Law, quoted above the territorial jurisdiction of each area court and upper area court which is delimited is conferred and could only be found in the warrant establishing each court and no more.

It is to be noted that the practice in Kwara State generally is that , each court is expected to fix copy of its warrant at the courts notice board. Whereas the practice in the then Northern region was and some present states in the same region is whereby the territorial jurisdiction of each court is gazetted and published for the consumption of public far and near.

It is better that the said practice be employed whereby territorial jurisdiction of each court is gazetted and published for the consumption of public, far and near. This practice if employed will in due course enable the litigants to ascertain the applicable territorial jurisdiction of the court which is to hear and determine his matter. Therefore the issue of jurisdiction could be heard and determined on the outset and this will in turn reduce waste of time, energy and manpower of litigants and our busy court rooms.

It is apparent on the record that the initial sitting of the court on this matter was before the area court Tsaragi on 27th March, 2010 but the matter was further adjourned for the 'continuation of hearing before this court sitting at Lafiagi Area court'.

The deduction here is that the initial sittings were at Tsaragi but subsequent ones were at Lafiagi where the appellant is resident under the same judge. The presiding judge is a resident judge assigned to Tsaragi Area Court but has no dual jurisdiction over Tsaragi and Lafiagi towns.

Therefore, the ground on the issue of jurisdiction succeeds. On the above premises, the appeal is allowed and the whole of this matter needs to be retried. This matter is remitted and to be heard by another resident judge at Lafiagi Area Court denovo.

SGD	**SGD**	**SGD**
A.A. OWOLABI	**A.K. ABDULLAHI**	**A.A. IDRIS**
KADI	**KADI**	**KADI**
28/9/2010	**28/9/2010**	**28/9/2010**

IN THE SHARIA COURT OF APPEAL OF KWARA STATE, NIGERIA
IN THE SHARIA COURT OF APPEAL OF ILORIN JUDICIAL DIVISION,
HOLDEN AT ILORIN ON THE 7TH OCTOBER, 2010.
29TH SHAWWAL 1431 A.H

BEFORE THEIR LORDSHIPS:

A.K. ABDULLAHI - HON. KADI SCA

A.A. IDRIS - HON. KADI SCA

A.A. OWOLABI - HON. KADI SCA

MOTION NO: KWS/SCA/CV/M/IL/17/2010.

BETWEEN:

MUNIRU KAYODE ELELU - PPELLANT

AND

NIMOTALLAHI MUNIRU - RESPONDENT

PRINCIPLE

It is trite law under Sharia that a person who decides to keep silent in his case be left alone regarding his silence.

BOOKS, STATUTES REFERRED TO

Fawakihu Dawani vol. 2, page 220.

RULING: WRITTEN AND DELIVERED BY A.K. ABDULLAHI

The appellant's counsel filed a motion on notice before this court dated 29/9/2010 and filed on 4/10/2010.

The motion is asking for an order of this Hon. Court for enlargement of time to file notice of appeal against the part of decision of the Area Court 1 No 3 Ilorin delivered on 30/7/2010.

On the 7th October, 2010. when the case came up for hearing the applicant's counsel told the court that he discovered he has made the fundamental mistake in the motion and he prayed for the withdrawal of the motion to put house in order and the respondent's counsel did not object to the withdrawal of the application.

Having heard from both counsels in this application, the motion is hereby struck out.

SGD	**SGD**	**SGD**
A.A. OWOLABI	**A.K ABDULLAHI**	**A.A. IDRIS**
HON. KADI	**HON. KADI**	**HON. KADI**
07/10/2010	**07/10/2010**	**07/10/2010**

IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIA.
IN THE SHARIA COURT OF APPEAL OF ILORIN JUDICIAL DIVISION
HOLDEN AT ILORIN ON WEDNESDAY 13TH OCTORBER, 2010.
13TH DHUL – QADA 1431 A.H

BEFORE THEIR LORDSHIPS

I. A. HAROON - HON. GRAND KADI
A.A. IDRIS - HON. KADI
S.M. ABDULBAKI - HON. KADI

APPEAL NO: KWS/SCA/CV/AP/IL/11/2010
BETWEEN:-

ATTAIRU GBADAGUN - APPELLANT
VS.
ZENABU MANKO - RESPONDENT

PRINCIPLE:

Litigation is a serious business and no counsel should be allowed to take the court into ransom.

RULING: WRITTEN AND DEVLIERED BY I.A. HAROON

This is an appeal filed by the appeallant, Attahiru Gbadagun against the decision of the Area Court Grade 1 Tsaragi in its ruling of 17th of May, 2010. The respondent herein is Zenabu Gbadagun.

The appellant's counsel, was Moses M.J. Dangana Esq., while the respondent's counsel was Y.A. Dikko Esq.

The appeal was dated and filed on the 28th May 2010. The reliefs being sought from this Honourable Court are:-

(1) To set aside the sundry orders made by the trial court on the 17/5/2010.

(2) To declare that the trial court has no jurisdiction to adjudicate over the case.

And for order of this honourable court transferring this divorce suit to Upper Area Court Lafiagi or any Upper Area Court in Ilorin, or any other order (s) the Hon. Court deems fit to make.

When the appeal came up for mention again on the 13th October, 2010, the two parties were absent, only the respondent's counsel appeared.

The respondent's counsel Y.A. Dikko Esq., submitted that non appearance of the appellant and his counsel showed that they were not serious with appeal because the record of

proceeding has not been sent from the lower court and submitted further that litigation is a serious business and the appellant and his counsel could not hold the court into ransom, he then urged the court to strike out the appeal for lack of diligent prosecution.

Having listened very attentively to the counsel for the respondent. We agreed with him that litigation is a serious business and that no counsel should be allowed to take the court into ransom, also that for the past 3 months and since the counsel to the appellant had been relocated to Abuja nothing had been heard from him and the appellant did not make any effort to pursue the appeal.

In the light of the foregoing, we granted the prayer of the respondent's counsel that the matter be struck out. On the issues relating to the previous order, the counsel to the appellant can file another application for the vacation of the said orders,

The appeal is hereby struck-out.

SGD	**SGD**	**SGD**
S.M. ABDULBAKI	**I.A. HAROON**	**A.A.IDRIS**
KADI	**KADI**	**KADI**
13/10/2010	**13/10/2010**	**13/10/2010**

IN THE SHARIA COURT OF APPEAL OF KWARA STATE NIGERIA, IN THE SHARIA COURT OF APPEAL LAFIAGI JUDICIAL DIVISION,

HOLDEN AT SHARE 9TH NOVEMBER, 2010
3RD DHUL-HIJJA 1431AH.

BEFORE THEIR LORDSHIPS:

S. O. MUHAMMED - HON. KADI SCA

S. M. ABDULBAKI - HON KADI SCA

M. O. ABDULKADIR - HON. KADI SCA

APPEAL NO: KWS/SCA/CV/AP/LF/04A/2010

BETWEEN:

EGIBORIBO SODEGBA

VS

MOHAMMED NDMAKA

PRINCIPLE:

An application would be allowed if all the requirements for its validity are found.

BOOKS, STATUTES REFERRED TO:

1. Order 7 R 2 (1) SCA Rules.
2. Order 3 R (1) & (2) and Order 4 R 1 of the SCA Rules Cap S4 Laws of Kwara State 2006

RULING: WRITTEN AND DELIVERED BY S.O MOHAMMED

The appellant /applicant, Egiboribo Sodegba filed the appeal against the decision of Area Court 1 Shonga in the suit No 8/2010 delivered on the 4th day of March, 2010. When the appeal came up for hearing both parties were absent, both the appellant's/applicant's counsel and the representative of the respondent were present. The counsel to the appellant/ applicant moved a motion praying the court to grant leave to amend the Notice of Appeal and further order as it is deemed fit. While the grounds for this amendments are well stated on the face of the motion papers, the representative of the respondent did not object to it. The motion paper was duly served on the respondent's counsel Wahab Ismail and neither himself nor any of his

colegues is in court and there is no cogent reason for his absence and no any counter affidavit against the motion.

As a result of the above, we decided to allow this application by invoking Order 7 Rule 2 (1) which empowers us to listen to the appellant's counsel. as follows:

1. **We hereby grant leave to the applicant to amend his motion and grounds of appeal as prayed.**
2. **We also hereby allow the applicant to include the omitted suit Number of the Case being appealed against on the notice of appeal.**

This application succeeds and we so hold.

SGD	**SGD**	**SGD**
M. O Abdul Kadir	**S. O Mohammed**	**S.M. AbdulBaki**
KADI	**KADI**	**KADI**
9th Nov. 2010	**9th Nov. 2010**	**9th Nov. 2010**

IN THE SHARIA COURT OF APPEAL KWARA STATE, NIGERIA IN THE SHARIA COURT OF APPEAL ILORIN JUDICIAL DIVISION, HOLDEN AT ILORIN ON THURSDAY 18TH NOVEMBER, 2010- 12th DHUL- HIJJA, 1431 AH.

BEFORE THEIR LORDSHIPS:

- **I.A. HAROON, - GRAND KADI, S.C.A**
- **M.O. ABDULKADIR - KADI, S.C.A**
- **A.A. OWOLABI, - KADI, S.C.A**

MOTION NO: KWS/SCA/CV/M/IL/18/2010

PRINCIPLES :

- Islamic Civil Procedure.
- Application for enlargement of time to file appeal
- Granting an unopposed application is not automatic but could be granted on good ground.
- Affidavit or affirmation supporting an application for enlargement of time, what it must contain.
- Mistake of counsel should not be visited on parties

Maxim:- 'Error or mistake is a ground for granting relief".

See Kawaidul fiqhiyat by Dr. Muhammad Bikr Isma'il, P.192 1997 Ed (1417 AH)"

" الجهل والنسيان والخطأ يرفع الإثم ".

راجع القواعد الفقهية، للدكتور محمد بكر إسماعيل ص 192 ط 1997م/1417هـ.

SUMMARY:

The applicant applied for enlargement of time within which to appeal from the decision of Area Court 1 No.3. Ilorin to Sharia Court of Appeal. In support of the application, he filed 12 paragraph affidavit and attached thereto an earlier Notice of Appeal which was wrongly filed as exhibit A1, the record of proceedings of the lower court, exhibit A2 and the proposed Notice of Appeal as exhibit A3.

There was no opposition, the application was granted but for the notice to be filed within 14 days , attached thereto is the order of the Sharia Court of Appeal

BOOKS/STATUTES AND CASES REFERRED TO

1. Order 4 Rule 3 (1) (a) & (b) of the Kwara State Sharia Court of Appeal, Rules 2006
2. Alqamusul Qanuni Thulasi by Muris Makhala Esq. Dr. Ruhi Albahlaki and Salih matar Esq. 1st Edition page 568.
3. Ahkamul Ahkami commentary on Tuhfatul Hukkam page 21 line 64.
4. Sharhus Sagir commentary on Ahmed Adduraid's Akrabu Masalik Vol.4 page 65 (or Vol.2 page 348.
5. Kawaidul fiqhiyat by Dr. Muhammad Bikr Ismail 1997 page 192.
6. Yusuf Gidan Mallam v. Aale Gidan mallam CA/K/92s/87
7. Alhaji. Garba Kyawa v. Alhaji Yahaya Madawaki FCA/K/69/82

***BETWEEN*:**

MUNIRU KAYODE ELELU - APPLICANT

AND

NIMOTALLAHI MUNIRU - RESPONDENT

RULLING: WRITTEN AND DELIVERED BY HON. JUSTICE ABDULWAHAB A. OWOLABI (KADI)

RULING :

The applicant, herein Muniru Kayode Elelu was represented by Abdulfatai Yusuf Babadudu Esq. while the respondent was represented by M.S. Abaya(Mrs.) Esq. holding the brief of Iliyasu Saka Esq.

The applicant, by a Motion on Notice dated 11th October, 2010 which was filed on 12th October, 2010 prayed the court for the following orders;

1. An order of this honourable court for an enlargement of time within which the applicant can file his notice of appeal against part of decision of Area Court 1 No. 3, Ilorin in suit No. 153C/2010 delivered on 30th day of July, 2010.
2. An order of this honourable court allowing the applicant to file his notice of appeal out of time.

3. An order of this honourable court deeming the notice of appeal attached as exhibit 'A3' as duly filed and properly served in the circumstances.

4. AND for such further order (s) as this honourable court may deem fit to make in the circumstances of this case.

In moving the application, the learned counsel to the applicant submitted that the application was brought pursuant to Order 4 Rule 3 (1) (a) & (b) of the Kwara State Sharia Court of Appeal Rules 2006

Order 4 Rule 3 (1) (a) & (b) provides:-

"(1) Every application for enlargement of time shall be supported by:-

(a). An affidavit or affirmation of declaration having in law the effect of an oath setting forth good and substantial reasons for the application; and

(b). Grounds of appeal which prima facie shall give cause for leave to be granted."

The learned counsel to the applicant further submitted that the application was supported by a 12 paragraph affidavit sworn to by one Abdul-Hakeem Alfa-Nla, a litigation clerk in the office of Magajin Gari and Co. Attached thereto are three exhibits; exhibit Al, A2 and A3; the initial Notice of Appeal, the record of the trial Area Court 1 No 3 Ilorin and the (proposed) Notice of Appeal sought to be filed respectfully. He placed reliance on paragraphs 4 to 11 of affidavit in support. He further referred us to the grounds for the application and the attached exhibits.

The respondent did not file counter affidavit and did not oppose the granting of the prayer but conceded to the granting of same.

On 11/11/2010 when the matter came up for hearing, we listened to the submission of the learned counsel for the applicant, considered the concession of the respondent counsel and we perused the content of the affidavit along the line with the exhibits. We observed that the reasons for the application in the supportive affidavit are outlined as follows:-

"1. That the applicant /appellant who was a defendant at the trial was not satisfied with the part of the decision of the trial court.

2. That the applicant/appellant employ (sic) the service of Messrs Magajin Gari & CO., to appeal against the said part of the decision.

3. That the notice of appeal was prepared, filed at the trial court and served on the plaintiff's/respondent's counsel,…"

4. That it (sic) was after filing at the trial court we commence (sic) the process of getting the record of proceedings at the trial court.

5. That it was after the record of proceedings is (sic) ready we discovered that the notice of appeal was wrongly filed at the trial court……..."

The application relates to enlargement of time within which the applicant could file Notice of Appeal to Sharia Court of Appeal

The Sharia Court of Appeal Rule relied upon in this application requires that the application for enlargement of time must place before the court by an affidavit evidence; good and substantial reasons for the applicant's delay reasonably. Also, he must exhibit ground(s) of appeal which prima facie shall give cause for leave to be granted.

In considering the application, this court took into consideration the applicable Islamic law and practice in line with the rule of this court.

The word enlargement or extension of time "**تمديد الفترة أو تمديد الوقت**

means:

'Elongation of period after the expiration of the stipulated time or agreed time'' See Alqamusul Qanuni Thulasi by Muris Makhala Esq. Dr Ruhi Albahlaki and Salih Matar Esq. 1st edition p568

إطالة المدة إلى ما بعد الأجل أو الميعاد المحدد،"

(راجع القاموسى القانوني الثلاثي للمحامي موريس نخله والدكتور روحي البعلبكي

والمحامي صلاح مطر الطبعة الأولى 2002).

The guiding principles in islamic law on issue of enlargement or extension of time **(تمديد الفترة أو تمديد الوقت)** are relatively the same for an adjournment, stay of execution, stay of proceedings, interim attachment and installment payment with some exceptions. These are equitable reliefs that are granted at the sole discretion of the judge judicially and judiciously.

For ease of clarity, the rule relating to adjournment is exhaustively stated as follows,;

ولاجتهاد الحاكم الآجـــال موكولة حيث لها استعمال (راجع أحكام الأحكام على تحفة الحكام ص 21 س 64)

"The judge resorts to discretion for granting adjournment as per given circumstances, which such an exercise is desirable" See Ahkamul-Ahkam short commentary on Tuhfatul - Hukam, page 21 line 64.

The principle relating to an adjournment was further expatiated in Sharhus Sagir – commentary on Ahmed Ad-duraid's Akrabu Masalik, Vol. 4 pg 65 (or vol. 2 pg 348) which states thus:

" ومن استمهل أي طلب المهلة لدفع بينة أقيمت عليه بحق ..... أمهل الطالب بالاحتهاد من الحاكم " .

"Whoever seeks an adjournment of extension towards the defence of a claim, the grant of the indulgence sought is at the discretion of the judge."

Enlargement or Extension of time is called تمديد الفترة أو تمديد الوقت which has been defined earlier in this ruling.

Invariably, judicial discretion must not only be judicial but also judicious in approach. To be judicious, it must take into consideration public interest and public benefit. It is to be noted that Judicial discretion (مصلحة المرسلة) are determinable by Ijtihad.

The Sharia Court of Appeal has discretionary power to enlarge time for appealing out of time against the decisions, rulings or judgments of lower court by virtue of Order 4 Rule 3 (1) (a) and (b) of the Kwara State Sharia Court of Appeal Rules 2006. The discretion could only be exercised by the court if, the would be applicant satisfies the court by an

affidavit explaining the reasons for not appealing within the prescribed time. See the unreported decision of the Sharia secession of the Court of Appeal, Kaduna judicial division in Yusuf Gidan Mallam Vs. Sale Gidan Mallam CA/K/92s/87 which was delivered on 24th November, 1987 by Hon. Justice Mohammed JCA, as he then was.

In considering this application for an enlargement of time to appeal to Sharia Court of Appeal despite non opposition it behoves this court to properly consider the enabling rules empowering the court to exercise such discretionary power which the applicant must comply with to entitle him to the relief sought.

By a curious look at the provisions referred to above, it is crystal clear that such leave is not automatic, the applicant must fulfill certain conditions to entitle him to the grant of the discretion, such as filing an affidavit or affirmation on oath setting forth good and substantial reason for the application and exhibited thereto copy of the proposed grounds of appeal for the court to see if prima facie, there are serious issues which call for argument and decision by the court.

See the unreported decision of the Sharia session of the Court of Appeal, Kaduna Judicial Division in Alhaji Garba Kiyawa V. Alhaji Yahaya Madawaki FCA/K/69/82 which was delivered on 2nd June, 1983 by Hon. Justice U. Maidama, JCA of blessed memory.

We keenly observed that the applicant through his counsel filed a Notice of Appeal (exhibit A1) within time after the judgment of the lower court was delivered. The learned counsel by his genuity discovered that exhibit A was wrongly filed at the registry of the lower court, (pages 6, 7 and 8 of the affidavit in support referred to.)

A legal practitioner (Muhami) (المحامى) under the provision of Legal Practitioner Act, 2007 is akin to an agent in litigation (Wakilul Khusumat or Wakilul biddawa) "وكيل الحسومة أو وكيل بالدعوة" which is a professional agent and not a general agent.

It is glaring that the fault, mistake or error of filing exhibit A at a wrong registry of court was that of counsel for the applicant. Parties are not punished for the default of his counsel. Courts are not in the habit of visiting sin or mistake of counsel on litigant.

It is also the principle of Islamic jurisprudence that:-

" الجهل والنسيان والخطأ يرفع الإثم "
.

راجع القواعد الفقهية، للدكتور محمد بكر إسماعيل ص 192 ط 1997م/1417هـ.

'Error or mistake is a ground for granting relief".

See Kawaidul fiqhiyat P192 by Dr. Muhammad Bikr Isma'il, 1997 Ed (1417H)"

We are bound by the above cited principle of Islamic Law. We could not by that do otherwise than to grant prayers 1 and 2 of the application.

By the rule of our court, prayer 3 of the application could not be entertained by this court going by the provision of the enabling rules cited in support of the application. Prayer 3 in the application is therefore refused.

The application in prayers 1 and 2 are meritorious and ought to be granted. The application hereby succeeds on prayers 1 and 2 of the Motion on Notice dated 11th November, 2010 which was filed on 12th November, 2010 and same is accordingly granted. The applicant is therefore required to file and serve his Notice of Appeal against part of the decision of Area Court 1 No 3 Ilorin in suit No 153C/2010 which was delivered on 30th July, 2010 with the registry of this court within 14 days from the date of this ruling.

SGD	SGD	SGD
A.A. OWOLABI	**I.A.HAROON**	**M.O.ABUDL-KADIR**
GRAN KADI	**GRAND KADI**	**GRAND KADI**
18/11/2010	**18/11/2010**	**18/11/2010**

IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERI,
IN THE SHARIA COURT OF APPEAL OF ILORIN JUDICIAL DIVISION
HOLDEN AT ILORIN ON WEDNESDAY 1ST DAY OF DECEMBER, 2010- 25TH MUHARRAM, 1431 A.H.

BEFORE THEIR LORDSHIPS:-

S.O. MUHAMMAD - KADI, SCA
A.A. IDRIS - KADI, SCA
S.M. ABDULBAKI - KADI, SCA

APPEAL NO. KWS/SCA/CV/AP/IL/16A/2010.

BETWEEN

DR. JIMOH RABIU OLUSEGUN - APPELLANT
VS
BASHIRAT GIWA - RESPONDENT

PRINCIPLE:

1. Judge shall not give verdict on any matter before him without listening to the entire claim and proof.

BOOKS/STATUES REFERRED TO:

i. Irshad As-Salik by Abubakar bn. Hassan El-Katsinawiy; Vol.lll, pages: 119-120

RULING: WRITTEN AND DELIVERED BY S.M. ABDULBAKI.

This case started from the Area Court No. 2 Centre Igboro Ilorin. The appellant herein was the respondent while the respondent was the petitioner in a divorce suit between the parties. When the case came up before the trial court on 13th September, 2010 the petitioner/respondent was present in court while the respondent/appellant was absent. But the respondent/appellant was represented by a counsel, S.O. Abdul Kareem Esq. The petitioner/appellant informed the court that she sued the respondent/appellant for divorce and the claim of custody of the two female children of the marriage. In response to the claim of the petitioner/ respondent, the respondent/appellant's counsel objected to the granting of the claim. He also raised objection to the jurisdiction of the court from hearing the case on the ground that the respondent/appellant was served by substituted means instead of personal service. He said there has not been any order of the trial court made authorizing service of the process through substituted means. However, he

sought for the adjournment of the case to allow settlement of the case between the parties. He pleaded with the court to give time to the parties within which to resolve their differences. The petitioner, plaintiff/respondent, in response, told the court that she had gone to court on four (4) previous occasions seeking divorce and that she came again because her life was being threatened. She therefore insisted that the court should hear the case without further delay because the settlement sought by the counsel would not work.

Based on the parties different requests, the court gave its ruling. The court ruled that the oral application by the respondent, defendant/appellant's counsel on the mode of service of court's process would not be entertained because it was orally made instead of by way of Motion on Notice. The court viewed that any matter as regards service of court's processes is a fundamental issue and should not be taken lightly and thus the matter should be by way of Motion on Notice explaining fully the mode by which the respondent defendant/appellant was served. The court said further that it believed that the appellant has adequate notice of the case. Consequently the trial court refused the oral application on the first issue.

On the second issue as regards request for time to amicably resolve the difference between the parties, the trial court is of the view that since the matter before the court is a divorce based on maltreatment of the petitioner/respondent leading to her miserable life she would be allowed to prove her case with evidence by the witness. The court then called on the plaintiff/petitioner to prove her case. But the counsel to the appellant informed the court that he would contest the ruling and therefore sought for adjournment. Having been dissatisfied with the ruling of the trial court, the appellant on 22nd day of September, 2010 filed before this court five (5) grounds of appeal.

On 27th October, 2010 when this case came up for hearing before this court the counsel to the appellant, S.O. AbdulKareem Esq. told the court that the case was slated for hearing and that subject to the convenience of the court he was ready to go on with the hearing of the appeal. But

the petitioner/respondent's counsel A.S. Akinola Esq. raised a preliminary objection to the appeal. He submitted that the appeal has been overtaken by event because the petitioner/plaintiff/respondent had withdrawn her case at the lower court. That following such withdrawal on 4th October, 2010 the trial court struck out the case. By that event, he had expected the appellant to withdraw the appeal before this court. He argued that going on with this appeal would be academic exercise only and will amount to abuse of court's processes because the original matter leading to filing this appeal has been withdrawn and struck out. He said further that settlement of cases is encouraged rather than litigation. He submitted that since this court is an appellate one, any party who has any grievance should go to the lower court for redress. He finally urged this court to strike out the case.

On the contrary, the counsel to the appellant urged the court to throw away the preliminary objection. He submitted that preliminary objection is against the principle of Islamic law and procedure. He conceded that a party who initiates a proceeding is the one who can also be allowed to terminate same but that is not in all cases. He submitted that proper withdrawal of a case must (1) be done in good faith and not out of malice (2) withdrawal shall not be done to perverse the cause of justice (3) the judge who is to strike the matter (said to be withdrawn) must exercise his discretion judicially and judiciously and (4) the judge must be legally competent to adjudicate in respect of the matter before him to make such order of striking out. He believed that the trial court judge when he sat on 4th October, 2010 that he had been transferred out of that court since 30th September, 2010 and that the judge was also aware of the pendency of this appeal before this court on the same matter.

He said further that the withdrawal was done to frustrate this appeal. He urged this court to allow him go on with the appeal.

Reply by A.S. Akinola Esq. he submitted that an interlocutory appeal under Islamic law cannot operate as stay of proceedings when it is clear that decision of the appellate court will not affect the substantive case before

the trial court more so when the issues raised in the appeal are issues of technicality and the trial court is a court of substantial justice.He informed the court that on 4th October, 2010 when the trial court sat to strike out the case before it, the issue of transfer of the judge was never raised. He therefore urged this court to uphold the preliminary objection raised.

Having listened to the learned counsel to the parties before this court, the only issue which the court considered appropriate in deciding this preliminary issue to this appeal is whether it is proper to allow a preliminary objection to be raised against an appeal filed before this court so as to stop hearing of the appeal.

We observe that the purpose of raising preliminary objection in this case as garnered from the submission of the learned counsel to the respondent is to save the time of the parties and the court from going on with the whole matter which has been reportedly withdrawn from the court of the first instance by the very person who initially took the matter before that trial court. But we note, also that a preliminary objection when it is raised and upheld may sometimes prolong the duration of a case longer than expected. However withdrawal of a case in any situation is not as simple as it appears to be, because it has far reaching consequences. The consequences that follow the withdrawal of a case pose some difficulties. That makes the law fixes some procedure to be followed to make withdrawal proper. But this is not the concern of this court at this moment.

In the instant case the matter was slated for hearing on 27th October, 2010. Both court and the parties expected to go on with the hearing of the appeal but the preliminary objection, which was raised prevented the hearing of the case. Under Islamic law and procedure, which is also, to some extent, the same in English law preliminary objection was not envisaged on that day because it was simply fixed for hearing. The appeal which was fixed for hearing simpliciter is not to consider whether the withdrawal of the case at the trial court was or is not proper. So when the preliminary objection was raised, the court was taken out of the scheduled event for the day.

The appellant's counsel's argument to the effect that the Islamic law and procedure does not welcome the idea of raising preliminary objection against hearing a case is correct, and represents the position of Islamic law and procedure and we so hold.

We quote:- Abubakar b. Hassan El-Katsinawiy, Commentary on Irshadus Salik, Volume lll pages 119 - 120.

ولايحكم حتّى يسمع تمام الدّعوى والبيّنة، ويسأل المدّعي عليه : هل لك مدفع يعنى لايحكم القاضي على أحد من الخصام حتى يسمع تمام الدعوى من المدعى، وإذا فرغ سأل القاضي [المدعي] عليه فيما ادعى فيه خصْمهُ من الحق، فإن أقرّ به كما ادعي عليه فلا إشكال ، وإن أنكر فعلى الطالب البيِّنة لإثبات حقّه.

The judge shall not give verdict on any matter before him without listening to the entire claim and proof. He then asks the defendant to put up his defence. That is to say a *Kadi* shall not give judgment against any party until he hears the full claim from the Plaintiff. When he finishes, the *Kadi* turns to the defendant for whatever he wants to say about the allegation leveled against him. If he admits it has made by the plaintiff there is no problem. But if he denies the onus of proof is placed on the plaintiff.

In conclusion, it is our view that the preliminary objection raised shall be and it is hereby overruled. We hereby call on the appellant to go on with the hearing of the appeal after which the respondent is free to put forward his own side of the matter. The preliminary objection fails.

SGD **SGD** **SGD**

S.M. ABDULBAKI **S.O.MUHAMMAD** **A.A.IDRIS**

KADI **KADI** **KADI** **01/12/2010**

01/12/2010 **01/12/2010**

IN THE SHARIAH COURT OF APPEAL OF KWARA STATE OF NIGERIA,
IN THE SHARIAH COURT OF APPEAL OF ILORIN JUDICIAL DIVISION,
HOLDEN AT ILORIN ON 1ST DECEMBER, 2010 /
25TH MUHARRAM, 1431 A.H.

BEFORE THEIR LORDSHIPS:

S.O MUHAMMAD - KADI SCA
A.A. IDRIS - KADI SCA
S.M. ABDULBAKI - KADI SCA

APPEAL NO. KWS/SCA/AP/IL/16/2009

BETWEEN:

ATANDA TAIYE - APPELLANT
VS
MRS. KUBURAT TAIYE - RESPONDENT

PRINCIPLE:

A litigant who dwells near by or within the environs of the court, but absent shall be regarded as a party who is present in court,

Proper party is a natural person or juristic entity who can sue or be sued in their proper and legal names or the names by which they are known " See Civil Procedure by Chidi N. Ojukwu and the Black Law Dictionary seventh edition by A Gerner.

If a person is popular with a synonym attached to him, whenever he is addressed by such a synonym he would normally not be enraged, for such a synonmy must have become part and parcel of him.

BOOK/STATUTES REFERRED TO:

1. Jawahirul - Iklil Sharh Mukhtasar Khalil, by Sheikh Salih Abdu- s- Samil Al- Abi al- Azhariy, Vol. II Page 231-232.
2. Al-Figh Al-Wadihu Min Al- Kitab Was- Sunnah 'Ala- Al-madhaib Al-Arba'at, by Dr. Muhammadu Bikri Ismail.

3. Adeleke Vs Falede and Others (1962) 1 AII, NLR 260 and 262.
4. Egolum Vs Obasanjo and others (1999) 7 NWRR pont 64 page 355 at 413.
5. Adisa Vs Attorney General of Kw. St (2003) FWLR, page 138 and 142.
6. B. Manu and Co (Nig) Vs Coustion (W.A) Ltd (1994) 8 NWLR (pt 360) 112.
7. Section 36 of Constitution 1999

JUDGMENT: WRITTEN AND DELIVERED BY A.A. IDRIS

The appellant is Atanda Taiye while the respondent is Mrs. Kuburatu Taiye. At the trial court the respondent was represented by Kabir Azeez Esq. the respondent filed a divorce suit before the Area Court No. 1 Centre Igboro Ilorin on the 20/7/2009. The case was slated for mention on 20/7/2009 but the appellant was absent from the court. As a result the case was adjourned to 4th August, 2009 for further mention. On the adjourned date, he was again absent. Infact attempts were made thrice to get him served, but the bailiff did not succeed because he was allegedly dodging the court processes. Later, substituted service was ordered on the 4th August, 2009 to bring him to court through the process and subsequently this was effected at his abode at Gaa-Imam Area Ilorin.

On the 20th August, 2009 however, the representatives of both parties were present. Kabir Azeez Esq. appeared for the plaintiff/respondent while T.M. Ona Olapo Esq. appeared for the defendant / appellant. The counsel for the plaintiff/respondent demanded that since the representative of the defendant/appellant was in court the claim should be read to him for him to react. The lawyer to the defendant/appellant refuted the allegation leveled against his client. The case was later adjourned to 25/9/2009.

When the court re-convened on the adjourned date, T.M. Onaolapo Esq. announced that he had a notice of preliminary objection, which was dated and filed on 25/9/2009. The application was supported by six-paragraph

affidavit, which is marked as exhibit "A" the Lawyer later said that they relied on the said exhibit and prayed the court to grant their application for lack of proper parties before the court.

The counsel to the plaintiff also filed nine paragraph affidavits. After hearing the addresses of the counsel for both side representing the plaintiff and defendant respectively, the trial court ordered for amendment of the name of the defendant to be Mallam Hamidu Hassan instead of Mr. Taiye. The defendant was not happy with the amendment of the trial court and appealed to this honourable court. By the Notice of Appeal, the appellant/ defendant filed three grounds of appeal on 5/11/2009.

They are as follows:-

1. That I am the applicant in the case and by virtue of my position I am conversant with the facts of the case.
2. That I am Mallam Hassan Amidu but the court processes pasted at a Mosque (Hassan Cisse) contained Mr. Atanda Taiye.
3. That the names in the court processes are not my names the copies of application for plaint and writ of summon hereby attached and marked as exhibit A. (Sic).
4. That my names are Mallam Hassan Amidu against Mr. Taiye Atanda upon which the plaintiff institute this action. (Sic)
5. That in the light of the above facts all the court process is not for me but for another person Mr. Taiye Atanda (Sic).
6. That I swear to this affidavit in good faith.

When the case came up on 8th day of July, 2010, both the appellant and his counsel were in court while the respondent was absent. Ayodele John Esq. who represented T.M Onaolapo, the counsel to the appellant submitted that the respondent was not served, because she was no longer residing in Ilorin. Accordingly, he further

submitted that the respondent had relocated to Lagos and that the appellant did not know her present address.

The counsel further declared that the counsel to the respondent AbdulAzeez was not ready to receive any court process on behalf of his client, therefore he applied for a substituted service which should be pasted in her last place of residence. He then urged the court to allow their application.

When the court asked the appellant on the easy way to get the respondent served he told the court that it would be difficult for him to get access to where the respondent was dwelling at Oke- Andi. He finally suggested that the only easy way for the court to get across to the respondent was through the substituted service. Mr. Ayodele John urged this court to grant their oral plea

In view of the above development, the court ruled that the counsel to the appellant should come by way of motion ex-parte to move the court to allow substituted service on the respondent and the case was adjourned to 13/7/2010 for motion.

On the 13th July, 2010, however, the respondent was absent but the appellant and his counsel were present. Ayodele John Esq. who was holding brief for T.M. Ona-olapo submitted that he had a humble application by way of motion – exparte which, was brought under inherent jurisdiction of this court, dated 12/7/2010 and filed same day. He went further to say that his application was supported by a seven-paragraph affidavit deposed to by the applicant. He further mentioned that they relied on all the averments particularly paragraphs 3, 4 and 5 respectively.

According to him, the counsel to the appellant said that he prayed the court to order for substituted service against the respondent and that all the court processes be pasted at the last place of the respondent's residence. This was precisely at Subair U. Baba Maria's residence Oke – Andi Area, Ilorin and for further order(s).

The counsel for the applicant further elaborated that their grounds for the application were that all efforts to serve the respondent with court processes proved abortive and that when the court bailiff tried to serve the respondent's

counsel, Abdul Kabir AbdulAzeez Esq. at Kulende Area Ilorin, the counsel vehemently refused to accept the court processes on behalf of his client. According to the counsel that was the only channel through which the court could serve the respondent. In his conclusion, Kayode John Esq. urged the court to grant their prayers as prayed for.

After the submission of the counsel, the court inquired from the court registrar to know the efforts made on her part to get the court process across to the respondent. Mrs. Hassanat Mustapha Assistant Chief Registrar, narrated their encounter thus:-

> "Mashood Lawal, bailiff went to serve the respondent with the Notice of Appeal through her counsel Kabir AbdulAzeez Esq. the counsel was reported to have said that his client had not come to intimate him on the appeal. She concluded that the counsel personally came to her in her office to confirm this:-
>
> Secondly, the registrar further stated that "we tried again through her guardian Subairu Baba Maria who also refused to collect the court process, and that their visit was repeated twice without success.

This episode was confirmed by the applicant. In view of the foregoing, the request of the appellant's counsel was granted and the substantive appeal No. KWS/SCA/CV/AP/IL/16/2009 was adjourned to 20th July, 2001 for hearing.

When the court reconvened on the adjourned date, the respondent was absent in court. In view of the fact that she as the plaintiff who sued at the trial court, her place of residence was presumed to be Ilorin where the court sat and she was adequately aware of the appeal, because she was served with substituted service of our court processes and the primary consideration in any application for substituted service is as to how the matter can be brought to the attention of the other party concerned. If there is proof that such service was effected on the appropriate party any judgment emanating from such proceeding is valid.

We utilized the opinion of Sheikh Khalil in Jawahiruh-Iklil Vol. 2 page 231 where he maintained thus:-

“a litigant who dwells near by or within the environs of the court, but absent shall be regarded as a party who is present in court”

والقريب كالحاضر.....

As a result of the above, the court called upon the appellant to state his grievances Onaolapo, Esq. the counsel to the appellant, submitted that the appellant was dissatisfied with the ruling of the area court I Centre Igboro which was delivered by Judge A.Y. AbdulKareem on 4th November, 2009 and hereby appealed to this court on the ground that the learned judge erred in law for failing to follow the law and the principle cited by the counsel to the appellant by suo motu ordered for the amendment of the name of the appellant instead of striking it out.

He submitted that the Notice of Appeal was dated and filed on 5th November, 2009. He went further to submit that at the trial court the appellant filed a notice of preliminary objection dated 29/9/2009 as contained in the record of proceeding page 9 paragraph 3. He stated that the applicant was praying the trial court to strike out the case for lack of proper parties and that the appellant among other things attached a six-paragraph affidavit to the application.

In his submission, the counsel to the appellant said that their bone of contention in the case was that the name of the appellant was not Mr. Atanda Taiye, but Mallam Hassan Hamidu. According to him, this was contained at page 7 of the record of proceedings and 1st paragraph of page 8. He finally submitted that they relied on the two cases cited in the records of proceedings.

In conclusion, the counsel to the appellant urged the court to allow the appeal and set aside the ruling of the trial court which was delivered on 4th November, 2009, because it lacked proper parties before the court. According to him, he maintained that where there are no proper parties before a court the only alternative for the court is not to amend case but to strike it out.

We have gone through all the court processes placed before us in this appeal and all the relevant pages of the

trial court's record of proceedings to which we have been referred to by the learned counsel for the appellant. We have also listened to the submissions of the counsel to the appellant, the appellant and our court registrars on the efforts made to get the respondent served. Further more, we glanced into various authorities on which the appellant relied in support of his stand. Having said this much, we shall now proceed to resolve the issue before this honourable court. We are of the opinion that justice in this appeal will rest on our consideration of the following issues: Did the trial court violate the Islamic practice and procedure for failure to work with the legal submission by the counsel to the appellant? Was the trial court in order to correct the mistake suo motu? Were there any proper parties before the court?

We now come to consider whether the trial court was correct or in error for amending misnomer suo motu. It is a well-established principle that the trial judge has discretion on amendment during the proceeding. This is because the court is to decide the rights of the parties, and not to punish them for mistake they made in the conduct of their case by deciding otherwise than in accordance with their rights. We are not aware of any kind of error or mistake which, if not fraudulent or intended to overreach, the court ought not to correct it, provided it can be done without injustice to the other party see Adeleke Vs. Falade and another (1962)1 ALL NLR 260 AND 262.

Even the common law courts have now emphasized the doing of substantial justice rather than placing reliance on technicalities see the case of Egolum Vs Obasanjo and others (1999) 7 N.W.L.R. Part 611, P. 355 at 413 where Hon. Justice Achike J.S.C.,(as he then was) stated thus:

> The hey days of technicality are now over because the weight of judicial authorities has today shifted from undue reliance on technicalities to doing substantial justice even handedly to the parties to the case.

Therefore the argument of the counsel to the appellant is too technical as it does not tally with the wide powers of a trial judge to amend parties in matters before him suo motu

in order to reflect the real situation see Adisa Vs. Attorney General of Kwara State (2003) F.W. L.R. page 138 and page 142.

We opined that there is no justification in dismissing or striking out a pleading or the entire action because of an accidental curable defect in name. We therefore hold that in the absence of any legal cogent or any other acceptable argument, this submission ought to be dismissed for lacking in merit and it is hereby dismissed.

Furthermore, the learned counsel for the appellant argued that the trial court in its ruling of 4th November, 2009 failed to work with the legal submission made by him before it.

On our part, we feel that the court is not bound by the legal arguments presented before it by any learned counsel for any party, more so that the case law authorities cited by the learned counsel for the appellant during the proceedings were not relevant to the case at hand which is misnomer as the cited cases dealt with the issues of non-joinder and necessary party.

Coming back to the issue of proper party before the court, who is proper party?

> Proper party is a natural person or juristic entity who can be sue sic in their proper and legal names or the names by which they are known "see civil procedure by Chidi N. Ojukwu and the Black Law Dictionary Seventh Edition by A Garner.

The counsel to the appellant vehemently maintained that the name of the appellant/defendant is not Mr. Taiye Atanda but Mallam Hassan Hamidu. We hold that the counsel was trying to resort to technicality, which might prevent the trial court from entertaining its jurisdiction.

But courts are set up to do substantial justice and in the pursuit of this, all forms of technicalities, which will act as determent to the determination of the substantial issues between the litigants must be shunned.

The dispute in name in this case is centred around what is known in Arabic as الترادف synonym (اشترك في المعنى)

Which is like laqab or kuniya / nickname. Examples of this abound, for instance a second name for Kubura is Khadijat,

Faruq - Umar

Garba – Abubakar

Ado - Adam

In Yoruba parlance for example Taiye means the first born of the twins and in Arabic Taiye also is known as Hassan. Therefore, any one who is bearing Hassan is known as Taiye in Yoruba and there is no dispute and should not be any dispute about Taiye meaning Hassan in Shariah. Therefore, what the counsel said about the name of the appellant does not in our candid opinion prevent Taiye from bearing Hassan since he is the bonifide husband and Muslim.

> "It is proper for him to be called by such name" .... جاز أن ينادى بـــه

Secondly, it is erroneous and even insulting to the intelligence of a reasonable person to say that a mother of six who had stayed with her husband for eighteen years can now mistake the name by which her husband is popularly known. Mrs. Kuburatu Taiye confirmed in her counter affidavit at the trial court that since 1992 when she was married to the appellant/defendant he had been known and called Taiye. Besides, all people residing at Gaa Imam address him and refer to him as Taiye Atanda and not Mallam Hassan Hamid as claimed. This technicality of name was therefore designed to prevent the course of justice, which this court will not allow, because it will be sheer fruitless voyage to go out of its way to uphold such technicalities.

At best he was sued with his traditional nickname or synonym by which he is known throughout that environment. The synonym is as important in shariah as real name Shariah Law by Dr Muhammadu Bikri Ismail maintained in his book Al-Figh Wadih Minal-Kitab Wasunah ala-Madzhab al-Arbahah stipulate:-

إن اللقب إذا اشتهر صاحبه به... وأصبح خفيفاً على صاحبه لايغضب منه ، ولا يتمنى أن يزول عنه جاز أن ينادى به ويخبر به عنه، على الراجح من أقوال الفقهاء .

- راجع الفقه الواضح من الكتاب والسنة على المذاهب الأربعة ، د محمد بكر إسماعيل.

"If a person is popular with a synonym attached to him, whenever he is addressed by such a synonym he would normally not be enraged for such a synonym must have become part and parcel of him.

However, the issue of Taiye alone does not affect or detract him from his true and well-known identity as a husband by which his relation with the respondent can be distinguished from that of other persons. We firmly believe that judicial process in any court is discredited when it is bogged down by technicalities and that is why at all times the tendency towards technicalities should be eschewed. The determination to do substantial justice should remain the preferred option, and hallmark of our judicial system.

For these reasons therefore, we do not find any substance in the submission of the learned counsel for the appellant in the issue. We therefore, resolve this issue against the appellant.

On the competence of the trial court to try the matter before it, we are of opinion that the subject matter of the case is within its jurisdiction, and there is no feature in the case which may prevent the trial court from entertaining it. The court can only lack jurisdiction when actions before it are not being properly constituted, such as when the proper party/parties are not before the court and this is not the case in this situation. This issue is consequently resolved in favour of the respondent/plaintiff.

It is pertinent to note that the mere appearance of Mr. Taiye before the trial court and this honourable court shows that he is a proper party to the case because of his conjugal relationship with Mrs. Kuburat Taiye which makes him necessary party to the case. He is not only interested in the

subject matter of the proceedings but also someone in whose absence the proceeding could not be fairly dealt with.

Having elaborated this much, this issue has direct bearing on misnomer and where such case arises on the part of plaintiff or defendant such could be put right by amendment provided that the misnamed and the intended to be sued is a juristic entity and in existence. See B. Manu and Co. (Nig) Ltd Vs. Constain (W.A.) Ltd (1994) 8 NWLR (Pt 360) 112.

A primary issue in setting the limits is to bear in mind the distinction between a mistake as to the name of party intended to be sued and a mistake as to the identity of the party to be sued. The former is a misnomer, which can be rectified by amendment, whereas the latter is not. The entire basis of correction of misnomer is that the right party had been sued but in a wrong name as alleged by the appellant. This situation does not involve substitution of a new party, the party after the correction or taking the presumed name is the same person, which was according to him and was misnamed. In such a case, at least as a matter of theory, no question of defeating a Statute of Limitation arises. Therefore we hold that to all intents and purposes this is not a clear case for striking out.

Fortunately, from the inception of the action the identity of the defendant was known because of the conjugal relationship of the plaintiff/respondent with the defendant / appellant. The issue before us now is what is the name of the husband of the plaintiff/ respondent whose identity is known and about whose identity there is no dispute?

It is known to both parties that they are husband and wife and the wife will never mistake her husband for another person. As such, Mr. Taiye is the husband of Mrs. Kuburat.

In conclusion we have considered seriously the submission of counsel to the applicant, but we are of the view that striking out this case based on curable defect will create hardship and constitute a denial of the right to fair hearing as enshrined under Section 36 of the Constitution of the Federal Republic of Nigeria 1999.

We therefore opined that the issue of misnomer in this case should in the interest of justice and avoiding

technicality, which shariah and common law court do not accommodate, be regarded as a curable defect that could be amended by the trial court.

Furthermore, interest of justice is the meeting point between the common law and Islamic law on the issue of amendment since this is Shariah Court of Appeal, where the emphasizes are placed more on doing substantial other than technical justice.

We would not allow our courts to be used and manipulated through technicalities, as a vehicle for perpetrating injustice. Therefore we hold that the amendment effected by the trial court is in order and we affirm same.

The appeal fails.

SGD	**SGD**	**SGD**
S.M. AbdulBaki	**S.O. Muhammad**	**A.A. Idris**
Kad	**Kadi**	**Kadi**
1/12/2010	**1/12/2010**	**1/12/2010**

IN THE SHARIA COURT OF APPEAL OF KWARA STATE , NIGERIA,
IN THE SHARIA COURT OF APPEAL LAFIAGI JUDICIAL DIVISION,
HOLDEN AT SHARE 9TH DECEBER, 2010- 3rd / MUHARRAM, 1431 AH.

BEFORE THEIR LORDSHIPS:

S. O. MUHAMMED - HON. KADI

S. M. ABDULBAKI - HON KADI

M. O. ABDULKADIR - HON. KADI

APPEAL NO. KWS/SCA/CV/AP/LF/08/2010

BETWEEN:

EGIBORIBO SODEGBA

VS

MOHAMMED NDAMAKA

PRINCIPLE:

The plaintiff is he who will be left alone whenever he decides to terminate his case by withdrawing the case.

BOOKS, STATUTES REFERRED TO

1. Fawakihu Dawani by Sheikh Ahmad Bin Gunain Al- Azhary vol. 2, page 220

RULING: WRITTEN AND DELIVERED BY S.O MOHAMMAD

This is an appeal filed by appellant Egiboribo Sodegba against the decision of area court Tsaragi delivered on the 24th days of June, 2010 in the suit No 61/2010 case No 189/2010. The respondent here in is Mohammed Ndamaka. The appeal was slated for hearing on the 7th day of December, 2010, The appellant's counsel told the Court to withdraw the appeal because events have overtaken it. In view of this foregoing request, the provision of Islamic law is that when the plaintiff /appellant decides to withdraw his/her case, he/she shall be allowed to do so.

Fawakihu Dawani Vol. 2. P. 220 provides:

"The plaintiff is he who will be left alone whenever he decides to terminate his case.

المدعى هو الذي لو سكت لترك على سكوتــه .

In view of this authority, we grant the prayer of the appellant's counsel and thereby strike out the appeal.

Appeal struck out.

SGD	**SGD**	**SGD**
ABDUL KADIR KADI	**S. O. MOHAMMED KADI**	**S.M. ABDULBAKI KADI**
9/11/ 2010	**9/11/ 2010**	**9/11/ 2010**

IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIA, IN THE SHARIA COURT OF APPEAL OF ILORIN JUDICIAL DIVISION, HOLDEN AT PATIGI ON TUESDAY14TH DAY DEC. 2010 – 8th / MUHARRAM, 1431AH.

BEFORE THEIR LORDSHIPS:

I.A. HAROON - GRAND KADI
A.A. IDRIS - KADI S.C.A
A.A. OWOLABI - KADI S.C.A

APPEAL NO: KWS/SCA/CV/AP/PG/01/2010

BETWEEN:-

AISHATU TENI MADU - APPELLANT
VS
MADU IBRAHIM - RESPONDENT

PRINCIPLE

The plaintiff is he who will be left alone whenever he decides to terminate his case for lack of interest in the pursuant of the appeal.

RULING: WRITTEN AND DEVLIERED BY I.A. HAROON

This is an appeal filed by the appellant Aishatu Teni Madu on the 11th October, 2010 and filed on 11/10/2010 against the decision of the Area Court Grade 1 Patigi delivered on the 6th October, 2010.

When the appeal came up for hearing on the 14th October, 2010 at Patigi. The appellant was present in court while the respondent was absent and there was no proof of service on the respondent due to the fact that the appellant who was to serve as pointer told our bailiff at the time she was requested to show the bailiff the place of the appellant that she was no longer interested in the pursuance of the case.

In the light of the foregone, the appellant had told us that she is no longer interested in the pursuance of the appeal.

On our side, we grant her request that the matter be struck out in line with our law which says.

“The plaintiff is he who will be left alone whenever he decides to terminate his case.

المدعى هو الذي لو سكت لترك على سكوتــه . " الفواكه الدواني ص 220"

Al –Fawakiu Dawani P 220

Appeal is hereby struck out.

SGD	**SGD**	**SGD**
A.A OWOLABI	**I.A. HAROON**	**A.A. IDRIS**
KADI	**KADI**	**KADI**
14/12/2010	**14/12/2010.**	**14/12/2010**

IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIA,
IN THE SHARIA COURT OF APPEAL OF ILORIN JUDICIAL DIVISION,
HOLDEN AT ILORIN ON WEDNESDAY, 29TH DAY OF DECEMBER,2010
23RD MUHARRAM, 1431AH.

BEFORE THEIR LORDSHIPS:

S.O.MUHAMMAD	**-**	**HON KADI**
A.A. IDRIS	**-**	**HON. KADI**
S.M. ABDULBAKI	**-**	**HON. KADI**

APPEAL NO . KWS/SCA/CV/AP/IL/04/2010

BETWEEN:

JIMOH ABANISE	**-**	**APPELLANT**
VS		
FALEELAT AJADI	**-**	**RESPONDENT**

PRINCIPLES:

Our practice is to listen to the claim and the proof whether or not the appellant/respondent is represented.

The second category of judicial proof is one which established right with oath taking by claimant where the object in dispute is money or where it can be estimated in monetary terms.

BOOKS/STATUTES REFERRED TO:

i. Qur'an 2:228; 38:26

ii. Jawahirl -Iklil Sharh Muktasar Khalil by: Sheikh Salih Abdu-s-Sami'i Al-Abi al-Azhariy; Vol.ii, p.231-232

iii. Ihkam al-Ahkam 'ala tuhfat al-Hukkam; p.34

iv. The Practice of Muslim Family Law in Nigeria by M. A. Ambali; p. 119 – 122 at 120.

JUDGMENT: WRITTEN AND DELIVERED BY: S.O. MUHAMMAD

The respondent in this appeal, Faleelatu Ajadi, was the plaintiff at the Area Court Grade 1 No.2 Centre Igboro, Ilorin. She sued the defendant/appellant, Jimoh Abanise, her husband, for divorce, on the ground of maltreatment

and frequent beating. She added that the appellant used to disallow her from visiting her parents.

According to her, no **Nikah** between both of them and no issue for the past eight years they had lived together. The appellant sought for reconciliatioon which the trial court acceded to but which was not possible. The appellant then made a counter claim. At p. 2 of the record of proceedings he told the court as follows "The plaintiff is pregnant for me" The plaintiff denied the counter claim, on the same page, saying "I am not pregnant."

At a stage in the proceedings O.Y. Gobir Esq. represented the defendant/appellant and told the court that he had the instruction of his client not to object to the divorce but to counter claim for marriage expenses amounting to N199,000 only. The plaintiff/respondent called two female witnesses to establish her claim of maltreatment, frequent beating and disallowance to visit her parents by the defendant/appellant. In his oral address to the trial court, the learned counsel to the defendant/appellant argued that for the plaintiff/respondent to establish her case, she needed to call 'two male witnesses or two female witnesses and a male witness. Therefore, according to him, the respondent had not been able to prove her claim against the appellant. He cited **Mamma Ahmadu vs. Ahmadu Mayaki Yinusa (**1998) Sharia Court of Appeal Annual Report, page 72 particularly the last paragraph at page 76 to buttress his contention.

In his ruling on this issue of witness adequacy or otherwise, the trial court ordered the respondent to take oath of perfection to remedy the inadequacy. The respondent complied and took the oath accordingly.

Consequent upon this action, the trial court granted the prayer of the respondent by separating both of them and ordering the respondent to observe."…three months **iddah** in accordance to Qur'an 2.228" (sic). This decision was given on 15/10/2009.

We granted the appellant extension of time within which to file his appeal vide our ruling of 4/3/2010. Consequent upon this, he filed a notice of appeal through his counsel, O.Y. Gobir Esq. on 8/3/2010. The notice of

appeal contains only one ground which is hereby reproduced with the particulars of error.

GROUNDS OF APPEAL

I. The learned trial court erred in law when it ordered the plaintiff/respondent to take oath of perfection in a suit of divorce filed by the respondent on the ground of maltreatment and lack of care (sic).

Particulars of error

i) The respondent filed a suit of divorce against the appellant on ground of maltreatment and lack of care before the trial court (sic)

ii) The respondent in proving her claims called two 2 female witness (es) which fell short of the requirement of standard of proof. (sic)

iii) This being the case, the trial court ought to have dismiss her claim but instead, the trial court ordered the respondent to take oath of perfection and granted the divorce without recourse to the appellant's counter claim. (sic)

iv) Oath of perfection is not applicable to the matter of divorce(sic)

Meanwhile, concerted efforts were made to serve the respondent to appear before us, our registry reported to us, in the open court on 14/7/2010, the efforts made to serve her through her counsel Y.F. Zubair Esq. who represented her during the motion for extension of time. But the counsel refused to collect the court process because, according to him, he had not been contracted to do so by the respondent. We then ordered that our registry should intensify efforts, with the assistance of the appellant to serve her through the family head of Laole compound, Jagun area, Okelele, Ilorin her known address. The report given to us by our registry was not encouraging. The head of the family denied knowing anybody of the respondent's name, so, he could not assist.

The appellant by oral application, prayed us to give him one and a half months to enable him make more efforts to get the respondent served. We granted only one month

on 22/9/2010 in our ruling and adjourned to 20/10/2010 for definite hearing of the appeal on 27/10/2010 when we sat again to hear the appeal, the appellant was present while the respondent was absent. When we demanded for proof of service on the respondent, our chief bailiff, Ibrahim Salami, told us that he served the respondent on 18/10/2010 in her new husband's house at Jagun Area, Okelele, Ilorin but with difficulty. According to him, he had to throw and he did throw the summons at her. Our chief bailiff added that the respondent picked the summons but the new husband threatened him never to come to the house again.

Meanwhile, we resolved that the respondent was already aware of this appeal due to the scenario referred to above and decided to hear the appeal in her absence. Our decision on this is supported by Order VII Rule 2 (1) of the Sharia Court of Appeal Rules which provides as follows:-

> if the respondent or his representative fails to appear on the day fixed for the hearing of the appeal and does not show reasonable grounds for his failure to appear the court may, after satisfying itself that the summons has been duly served on him, hear the appeal and give judgment in his absence.

At this point and consequent upon our ruling, counsel to the appeallant made an oral application for a short date of adjournment which we granted and the appeal was further adjourned to 16/11/2010 for definite hearing. The appeal was finally heard on 1/12/2010. The appellant was present and also represented by O.Y. Gobir Esq. with J.R. Yusuf (Mrs.) Esq. The respondent was absent.

Arguing the appeal, the learned counsel to the appellant submitted that the appeal was filed consequent upon dissatisfaction to the judgment of the Area Court Grade I No.2, Centre igboro, Ilorin delivered on 15/10/2009. He reiterated that there was only one ground of appeal with just only one issue for determination viz – whether or not, based on the ground of maltreatment upon which the respondent premised her divorce and in the face of insufficient number of witnesses, the oath of perfection was the best procedure for the release of the respondent from

marital relationship with the appellant. He submitted that the procedure adopted by the trial court was confusing and misleading having regard to the circumstances of this case. According to him, the trial court asked the respondent to prove her case and she called two female witnesses. Then, the trial court ordered her to take oath of perfection to compliment the evidence of the two female witnesses. The trial court then gave judgment and granted divorce to the respondent without any regard to the counter claim by the appellant. He drew our attention to pages 4 – 7 and p.8 lines 18 – 23 of the record of proceedings to buttress his argument.

In order to support his submissions on the erroneous procedure adopted by the trial court, the learned counsel referred us to two of our previous judgments as follows:

Afusat Abake vs Alhaji Isiaka Sewa in appeal No.KWS/SCA/CV/AP/IL/16/95 page 1 at p.2 paragraph 4 -5 contained in our 1996 Annual Report.

Mamma Ahmadu vs Ahmadu Mayaki Yinusa in appeal No.KWS/SCA/CV/AP/LF/01/98 page 72 at p.76 paragraph 2 contained in our 1998 Annual Report.

Furthermore, the learned counsel to the appellant submitted that the oath of perfection was allowed only in monetary claims and referred us to

Salimonu Baba Musili and Musili vs Alhaji Oba Atanda in appeal No. KWS/SCA/CV/AP/IL/10/2003 page 17, the last paragraphs pp24 and 25 as contained in the 2005 edition of the Sharia Court of appeal Annual Report.

Finally, the learned counsel urged us to set aside the judgement of the trial court because the oath of perfection was improperly applied. On the counter claim, the learned counsel urged us to order another court to hear the counter claim because the appellant had been denied fair hearing.

We took enough time to go through the 11 page record of proceedings and keenly listened to the appellant's counsel in his brilliant submissions. We then arrived at three main issues as the focus in this appeal namely:

i) The effect, from the Islamic law point of hearing the appellant alone in the absence of the respondent or/and her representative

ii) Whether or not the trial area court was right to order the respondent to take oath to compliment the evidence of her two female witnesses and

i) What had become the fate of the counter claim (s) of the defendant/appellant.

On the first issue, it is perfectly in order under Sharia to hear and determine a case brought before a competent law court by a plaintiff/appellant in the absence of the defendant/respondent if the court is satisfied that the respondent is duly aware of the pending case or appeal but he or she, on his or her own decides to keep away from the court or be absent. This is the position of the Islamic law as clearly stated in **Jawahirul Iklil Sharhu Mukhtasar Khaleel** vol.II pages 231- 232. The most relevant part is hereby reproduced:

... العمل عندنا أن تسمع الدعوى والبينة حضر الخصم أو لم يحضر ، ثم يعلم بها.

(راجع جواهر الإكليل شرح مختصر خليل).

Our practice is to listen to the claim and the proof whether or not the defendant/respondent is present.

This same position of Islamic law is adopted in Order vii Rule 2 (1) of the Sharia Court of Appeal Rules **Supra.**

In view of the above two authorities, we are of the strong opinion that we were in order to have listened to the appellant and even to decide this appeal in the absence of the respondent who voluntarily choose to be absent at the proceedings inspite of her awareness of same. And, we so hold.

On the oath of perfection which the trial area court ordered the plaintiff/respondent to take in order to be entitled to favourable judgment, we took time to look at types of oath under the Islamic law and when they are applicable. There are four types, namely; oath of denial **يمين الإنكار** this has to do with monetary claims only **Yaminu-Tuhmah يمين التهمة** i.e. the oath taken by the defendant to

exonerate himself/herself from the charges against him/her, **Yaminul Qada, يمين القضاء** which is imposed when an assertion is made against a dead person, and **Yaminu Ma'a shahid يمين مع شاهد .** This is an oath to support the evidence of a single witness and it is also known as oath of perfection or **(Yaminut-Takmilah يمين التكملة)**

This last type is the type that directly affects the appeal at hand since, under Islamic law, evidence of two female witnesses is equated with the evidence of one male witness. And this is the type invoked by the trial Area Court judge in his ruling at p.9, the last paragraph as contained in the record of proceedings. For clarity purpose, we hereby reproduce what the learned Area Court judge said as follows:

> But however under sharia this rule can be regulated if plaintiff could perfect the evidence before the court with an oath of perfection to make the evidence stronger…(sic)

Our further research revealed that this type of oath is only applicable in matters involving money and NOT divorce occasioned by maltreatment and beating as claimed in this case. **Page 34 of Ihkamul Ahkam 'ala tuhfatil Hukkam** provides as follows

Meaning:

ثانية توجب حقا مع قسم
في المال أو ما آل للمال تؤم

The second category of judicial proof is one which establishes right with the taking of oath by claimant where the object in dispute is money or where it can be estimated in monetary terms. (emphasis ours)

Furthermore, M.A.Ambali, in his book "The Practice of Muslim Family Law in Nigeria" gave four categories of oaths same as above stated. (see pages 119-122). He however

stated categorically at p.120 that oath of perfection… "is applicable to daims having to do with money." See also this court's judgment in **Mariamo Morenikeji vs. Dende Omomeji** appeal No. KWS/SCA/CV/AP/IL/33/99 delivered on 22/12/99. It is contained in the Sharia Court of Appeal Annual Report of 1999 at P.108 particularly second paragraph of P.110

In view of all these authorities, we have no difficulty to agree with the learned counsel both in his only ground of appeal and also in his submission before us in respect of same. We therefore, resolve this issue in favour of the appellant and we so hold.

Finally, on the issue of counter claim we went back to the record of proceedings to authenticate it as argued by the learned counsel to the appellant. Our findings revealed that there were two counter claims in the record. At P.2 line 20, the appellant made a counter claim that the plaintiff/respondent was pregnant for him and the plaintiff/respondent denied the counter claim when she said: "I am not pregnant" (see p.2 line 23 of the records). Similarly, at P.4 lines 6 – 8, O.Y. Gobir Esq. the defendant/appellant counsel told the trial Area Court as follows:

> …. we have a counter claim of marriage expenses before the court. The amount worth N119,000 to claim from the plaintiff. (sic)

The plaintiff/respondent reacted immediately when she said:

> The defendant cannot claim anything from me. He had no counter claim… **(see P.4 lines 11 – 12)**

Unfortunately, the trial area court did not attend to these two counter claims at all inspite of the fact that the counter claims were glarinly stated before the court and recorded.

In our opinion, it is the sacred duty of a judge to attend to all claims and counter claims brought before him as failure to do so will amount to injustice. The Holy Qur'an says:

…. So judge between men in truth and justice and do	**((فاحكم بين الناس بالحق ولا تتبع الهوى فيضلك عن سبيل الله)).**

not follow the desires of your heart for it will mislead you from the path of Allah (Q 38:26).

" سورة ص ، آية 26".

Furthermore, S.36 (1) of the Constitution of the Federal Republic of Nigeria (1999) also emphasizes a person's to fair hearing.

In view of this, we conclude that the appellant was not given fair hearing in his counter caims inspite of the denial of the plaintiff/respondent to both counter claims. What would have been proper for the trial area court to do was to ask the counter claimer to prove his case or cases as counter claimed. Therefore, this last issue too is resolved in favour of the appellant.

On the whole, we allow this appeal and set aside the judgment of the Area Court Grade 1 No.2 Centre Igboro, Ilorin. We however, order the same judge to retry the case and to follow normal Islamic procedural rules to determine.

i) The claim of divorce by the plaintiff/respondent occasioned by maltreatment and beating and,

ii) The two counter claims of the defendant/appellant as stated in the body of this judgment.

We finally direct our registry to use means of substituted service to let the respondent be aware of this judgment according to the provision of the Islamic law quoted **supra.**

Appeal suceeds.

SGD	**SGD**	**SGD**
S.M.ABDULBAKI	**S.O.MUHAMMAD**	**A.A.IDRIS**
HON. KADI	**HON. KADI**	**HON.KADI**
29/12/2010.	**29/12/2010.**	**29/12/2010.**

IN THE SHARIA COURT OF APPEAL KWARA STATE OF NIGERIA,
IN THE SHARIA COURT OF APPEAL OF ILORIN JUDICIA DIVISION
HOLDEN AT ILORIN ON 30TH DECEMBER, 2010.
24th MUHARAM 1431 A.H

BEFORE THEIR LORDSHIPS:

S. O. MOHAMMAD - HON. KADI SCA
M .O. ABDULKADIR - HON. KADI SCA
A. A. OWOLABI - HON. KADI SCA

MOTION NO, KWS/SCA/CV/ M/ IL/21/2010

BETWEEN

IBRAHIM RAJI - APPELLANT
VS
RAFATU TEMIM - RESPONDENT

PRINCIPLES:

The court (Judge) should not give verdict against any party until it hears the full claim from the plaintiff

A plaintiff shall not be listened to except his complaint is well defined.

BOOKS. STATUTES REFFERES IS :

1. S. 54 Area Court law.
2. Order 3 R 1&2 Sharia Court of Appeal Rules.
3. CCD Vs A G. Anambra State (C1992) 8 NNLR p. 261
4. Order IV R 3 (1) (a) and (b) SCA rules.
5. Ashalu- madarik V. iii p. 197.
6. Siraju – salik Vol 1 page 198.
7. Alh. Idris Adam & 2 0thers VS Hajia Jumai Bashiru and 1 or (1997) 10 NMLR p. 81

RULING: WRITTEN AND DELIVERED BY M. O. ABDULKADIR

This is a motion on notice filed by the applicant Ibrahim Raji represented by Kamaldeen Kadir Esq. who held the brief of T. M. Onaolapo Esq. while the respondent Rafatu Temim was represented by Sulaiman Ayipo Esq. The said motion was dated and filed on 26th November, 2010 seeking the following reliefs:

(i) Leave and order of this honorable court for an extension of time for the applicant to apply for leave to appeal out of time. (sic)

(ii) Leave and order of this honorable court for an extension of time for the applicant within which to file the notice and grounds of appeal and to appeal out of time. (sic)

(iii) Leave and order of this honorable court to appeal. (sic)

(iv) And for such further orders as this honorable court may deem fit to make in the circumstances of this case. (sic)

The application is supported by seven paragraph affidavit deposed to by the applicant himself.

The application came up for hearing on 20th December, 2010.

While moving the motion, counsel to the applicant placed heavy reliance on the depositions in the applicant's affidavit in support of the said application.

He also made particular reference to paragraphs 3, 4, and 5 thereof which contained the reasons for delay or failure on the part of the applicant to file his intended appeal within the stipulated time prescribed by law. He finally urged this honorable court to grant this application as prayed.

On his own part, the learned counsel for the respondent strongly opposed the grant of this application .He submitted that it is agreed that the right to appeal is guaranteed by the Constitution of the Federal Republic of Nigeria1999, and even by section 54 of the Area Court law. He however submitted that Order 3 Rules 1 and 2 of the Sharia Court of Appeal Rules stipulates the time within which an aggrieved party can exercise a right of appeal, and as a matter of emphasis the counsel said a party has 30 days within which to appeal. He submitted further that the judgment of the lower court against this application delivered on the 9th July 2010 and therefore the applicant has from 9th July 2010 and 9th August 2010 an opportunity to appeal within that period but he failed to do that. He

referred this court to the 1st page of the motion paper to show that this application was filed on the 26th day of November 2010.He said by his own calculation, this application was filed by the applicant more than 3 months late, adding that for a party to file application for extension of time, there must be cogent and genuine reasons for doing that. He referred to paragraph 3 of the affidavit in support and submitted that it is not a cogent reason to say that the reason for the delay is because they have a hope for settlement. He said there was even no attempt to settle and he has never made any attempt to settle. The counsel referred the court to the case of CCD Vs AG Anambra State (1992) 8 NNLR pg 261. It was held that “where this is considered inordinate or unreasonable, the court will refuse the application to extend time" He finally prayed the court to refuse the application.

In his reply, learned counsel to the applicant told the court that the case cited by his learned colleague is not relevant to the matter at hand and therefore urged the court to discountenance with it.

We have carefully and painstakingly gone through all the papers filed as placed before us in connection with this application. We have equally listened to the submissions of the two learned counsels in favour or otherwise regarding the grant of the instant application respectively. It is apparent that the application herein relates to leave and or extension of time within which to appeal out of time.

The applicable rules of our court, pursuant to which the instant application has been brought, can be found in Order IV Rules 3 (1) (a) and (b) of the Sharia Court of Appeal Rules Cap s4 Laws of Kwara State 2006 as follows:

> *3 (1) Every application for enlargement of time shall be supported by-*
>
> *(a) An affidavit or affirmation or declaration having in effect of an oath setting forth good and substantial reasons for the application; and*

(b) Grounds of appeal which prima facie shall give cause for leave to be granted.

The two conditions (a) and (b) stated above are conditions precedent which must be satisfied together at the same time. If one fails, the entire application will fail. It therefore beholves the applicant to satisfy this requirement under which the application has been brought.

In our opinion, the primary issue for resolution is whether it is right for us to grant this present application as prayed by the applicant, especially at this stage of proceedings.

In this application, the applicant has filed a Motion on Notice supported by seven legs of affidavit stating therein particularly under paragraph 3, the reason for the delay to file his appeal within time, that was all.

In resolving the aforesaid issues, we have duly examined the materials placed before us by the applicant, and we have equally considered the applicable rules of this court and resolved that the affidavit in support of the applicant's motion does not contain sufficient reasons for the granting of the application. The applicant needs to go extra miles to file his grounds of appeal.

It is by that, the court will know whether or not there is need for the court to consider the application before it.

Under Islamic law, a court should not decide a matter until and unless it has listened to the entire complaints of the plaintiff, This is in conformity with the point of view of the following Islamic Procedural Law authorities:-

- **ASHALU- MADARIK vol. 111, page 197.**

Meaning:

The Court (Judge) should not give verdict against any party until it hears the full claim from the plaintiff.

ولا يحكم حتى يسمع تمام الدعوى والبينة.

- Also the book of **SIRAJU – SALIK** Vol. 1 page 198.

Meaning:
A plaintiff shall not be istened to except his omplaint is well efined**"**

إنَّ المدَّعي لا يُسمع دعواه إلاّ إذا ادّعى شيئاً معلوماً.

Therefore, where a plaintiff fails to comply with the above laid down rules he shall not be heard.

In this application the applicant has even made the situation worse in the sense that none of the 2 papers he filed contained the cause of the action or the subject matter against which he filed his application. Failure to do that is very crucial to the hearing of the application.

In compliance with the rules of court, it was held in the case of Alhaji Idris Adamu and 2 orders. Vs Hajia Jumai Bashiru and 1 other (1997) 10 **NMLR** pages 81 by Honourable Justice Muritala Aremu Okunola JCA who presided over a 3 panel of Court of Appeal held that:

"Ordinarily, all appeal are to be filed within the period specified by the various substantive statutes and the constitution. However, where a party has failed to appeal within the time stipulated in the statute, he needs an application for enlargement of time within which to do so, therefore In order to succeed in such an application, an applicant must establish the following:

(a)Good and substantial reason for failure to appeal in time.

*(b)*Substantial and arguable grounds of appeal.

It goes further to say that:

"The reason for these requirements is that the court's discretion will only be granted if it is clearly shown that the failure to appeal within time stipulated was not due to deliberate non - observance of certain procedure and it was not the fault of the applicant".

The aforesaid judicial authourity tallied in extension with similar provision under Islamic law regarding the doctrine of **TA' AJEEL.** and under no circumstances should an applicant refuses to comply with rules that are mandatory and must be strictly complied with by the applicant before the hearing of the application to that effect. On that

proposition, it was held in the case of **Alhaji Idris Adamu Vs Hajia Jumai Bashir (SUPRA)** that:

> *"*Rules of court are meant to be obeyed and where an appellant/applicant fails, refuses or neglects to conform with laid down rules of procedure, he should not expect a favourable consideration of his appeal or his application by the court."

Therefore, based on the aforementioned consideration, and in view of the naked facts that the applicant in this motion has not satisfied a condition precedent by filing grounds of appeal as demanded by our rules of court we have no alternative than to hold that this application lacks merit and it is therefore incompetent. In effect, it is accordingly struck out.

SGD	**SGD**	**SGD**
A.A. OWOLABI	**S.O. MUHAMMAD**	**M.O. ABDULKADIR**
HON. KADI	**HON. KADI**	**HON. KADI**
30/12/2010	**30/12/2010**	**30/12/2010**