Motions and Appeals

(1) IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIA IN THE SHARIA COURT OF APPEAL OF PATIGI JUDICIAL DIVISION HOLDEN AT PATIGI ON WEDNESDAY, THE 12TH DAY OF JANUARY, 2011, 7TH DULHIJAH 1432AH

BEFORE THEIR LORDSHIPS:

I.A. HAROON	**-**	**GRAND KADI**
A.A. IDRIS	**-**	**HON. KADI**
A.A. OWOLABI	**-**	**HON. KADI**

APPEAL NO. KWS/SCA/CV/AP/PG/02/2011

CROSS APPEAL NO. KWS/SCA/CV/AP/PG/03/2010

BETWEEN:

1 .	**NDANA MOHAMMED**	**-**	**APPELLANT**
	AND		
	MARIAM NDANA	**-**	**RESPONDENT**
2.	**MARIAM NDANA**	**-**	**CROSS - APPELLANT**
	AND		
	NDANA MOHAMMED	**-**	**CROSS – RESPONDENT**

principles:

1. Maintainance of wife and children is the responssblity of the husband.
2. Wife loses maintenance by husband if she refuses conjugal relationship.
3. The burden of proof lies on the husband who alleges lack of conjugal relationship with his wife.

4. A plaintiff's claim must satisfy two conditions: identifiability of the claim and it's explanation through evidence.
5. Whoever admits other person's right over him is bound to discharge it.
6. Court is bound to act only on admissible evidence properly adduced before it and not on conjectures.

BOOKS/STATUTES REFERRED TO

1. Alqawaninul fiqhiyat by Ibn Juzi'1 Vol. 2 Pg.192- 193 at (Chapter on maintenance.)
2. Ashalul Madarik on Irshadu Salik Vol.3 Pg.212
3. Bidayatul Mutahid wanihayatul Muqtasid by Ibn Rushd Vol.2 Pg.55
4. Distinquished Jurist's Prime Vol.2 Pg.64 by Prof. Imran Ahsan Khan Nyazee.
5. Ibnul- Abideen Vol.2 page 1000
6. Holy Quran: Baqarat, Chapter 2 Verse 233,Holy Quran Al – Maidaa Chapter 5:49 and Holy Quran Chapter on Talaq 65 Verse 7
7. Maliki law short commentary on Mukhtasar by Ruxton at Pg. 149,
8. Tabsiratul Hukkam Vol.2 Pg.54 and on admission Vol.2 Pg.56
9. Tuhfatul-Hukkam, at paragraph 23 – 24,,42 and paragraph 1406

JUDGMENT WRITTEN AND DELIEVERED BY A.A. OWOLABI

This appeal and the cross appeal (which were later consolidated) emanated from the decision of trial Upper Area Court, Patigi in Suit No.34/2010 and case No 27/2010 decided by the Hon. Alhaji Mohammed Dangana on 26/10/2010.

Ndana Mohammed was the defendant and Mariam Ndana was the plaintiff. They are herein the appellant and the respondent respectively. Both of them were husband and wife for couple of years blessed with six female children ; (1). Halima, 20 years, (2), Habibat, 17 years, (3) Fatima, 14 years, (4) Aishat, 12 years, (5) Aishat, 10 years and (6) Fatima, 6 years.

Mariam Ndana sued her former husband Ndana Mohammed, for lack of maintenance of herself and five children of the marriage. At the course of hearing of the substantive matters, it was discovered that there were appeal and cross appeal concurrently filed on the same day by Ndana Muhammed and Mariam Ndana. For the purposes of appreciating the issues involved in the main appeal and cross appeal, the two appeals were consolidated. Therefore, Ndana Mohammed who is an appellant and the cross - respondent in these matters is called the appellant while Mariam Ndana who is also the respondent and the cross - appellant subsequently be called the respondent.

The respondent, Mariam Ndana instituted an action against the appellant before the trial Upper Area Court claiming the sum of One hundred and sixty thousand Naira as feeding allowance for herself and their children for eleven years and school fees for four children.

The appellant denied the allegation and concluded that "….It is now three years that (sic) I had sexual intercourse with her."

The trial court adjourned the matter for reconciliation and continuation. On the adjourned date, the court straight away asked the respondent to prove her claim and ordered her to produce receipt of school fees.

The respondent then called two male and one female witnesses. The first witness, One Ndana Mohammed gave evidence which is summarized as follows:-

That the appellant did not feed his wife and the five children. He concluded that he was the one that used to feed them since five years ago.

The second respondent witness was by name Fatima Ndana. The witness gave evidence as follows; that the appellant did not provide food for the respondent and the five children of the marriage for previous five years and that she tried her best to reconcile them but the effort was in vain.

The third witness to the respondent was Mohammed Tsado. He gave evidence that the appellant did not feed the respondent and the five children of the marriage for about five years.

The respondent tendered receipts of school fees for the children of the marriage that she paid, same was admitted as an Exhibit. The appellant was afforded opportunity to call witness in defence, but he informed the trial court that he had no witness to call.

The trial court reviewed the evidence and concluded that the respondent had lost her right to claim feeding and maintenance for the period of 6 years on the ground of refusing sexual intercourse with the appellant.

In respect of the claim of feeding and maintenance of the five children in question, the trial court awarded the sum of Fifteen Thousand and Five Naira only (15,005.00) as compensation for six years for the five children and Five Thousand and Five Naira only (15,005.00) for school fees as found on receipt tendered as exhibit. The court further ordered the appellant to be responsible for other necessary things for the up keep and schooling of the five children.

Being dissatisfied with the decision of the trial court, the appellant and the respondent simultaneously filed two grounds and three grounds of appeal which are reflected in the Notice of appeal both dated and filed on 12/10/2010.

Upon going through both grounds of appeal and cross appeal, the appellant's main complaint before us was that the trial court was wrong to have ordered him to pay Fifteen thousand naira to the respondent as compensation as it is not true that he did not feed her for 10 years but he could not get the money to pay.

While the respondent filed her appeal before us on the ground that the award of Fifteen thousand and five naira only (N15,005.00) against the appellant was inadequate. The respondent replied that she was staying in the appellant's house throughout in the absence of the appellant because the appellant had another wife whom he was staying with. Thus, he abandoned her and all the six female children. She further told the court that one of the female children is now married.

The respondent further stated that during the course of misunderstanding there was reconciliation which even ended up in the pregnancy of the last female child. She added that the appellant has money as he had just sold a car but just refused to pay. She lastly requested for One Hundred and Sixty Thousand Naira only (N160.00.00) as her claim.

In his response, the appellant stated that he was the one paying the school fees but he was not collecting the receipt which the respondent is now capitalizing upon .He admitted that he has another wife with children and he feeds them.

In reviewing the fact and evidence at the trial court and the submission of both parties before our court on the appeal, we found the following issues as germane for the determination:

1. Whether the respondent is entitled to claim of maintenance for herself as claimed?

2. Whether the appellant who is the father of six female children out of whom one had been married out could in the circumstances of this appeal be relieved from the burden of their maintenance? The above two issues would be considered together.

The respondent's prayer for monetary claim of one hundred and sixty thousand naira only (160.000.00) being compensation for her feeding allowance and school fees of four children who were in both primary and secondary schools.

The defense of the appellant for refusal to feed the respondent and the children of the marriage was that the respondent refused him conjugal relationship. While the respondent further stated that the appellant abandoned her and the children of the marriage for the period of eleven years in the matrimonial home.

It is our well considered view that maintenance of wife and children of Islamic Marriage is the responsibility of the husband. This position is strengthened by the following authorities.

The Holy Quranic says;-

*Meaning: "The mothers shall give suck to their off spring for two whole years, if the father desires to complete the term. But he shall bear the cost of their food and clothing on equitable terms." (***Baqarat** chapter 2 verse

"والوالدات يرضعن أولادهن حولين كاملين، لمن أراد أن يتم الرضاعة وعلى المولود له رزقهن وكسوتهن بالمعروف". (سورة البقرة آية **233**) .

233.)

Almighty Allah further directed in the Quran thus:-

Meaning:"Let the man of means spend according to his means: and the men whose resources are restricted, let him spend according to what Almighty Allah has given him. Almighty Allah puts no burden on any person beyond what He has given him. After a difficulty, Almighty Allah will soon grant relief." (Quran Chapter 65 Verse 7)

" لينفق ذو سعة من سعتة ومن قدر عليه رزقه فلينفق مما ءاتـه الله لايكلف الله نفساً إلا ما ءاتاه سيجعل الله بعد عسر يسرا " . سورة الطلاق آية 7

However, if the wife refused conjugal relationship the consensus opinion of Muslim Jurists is that she loses maintenance by the husband.

We are fortified by the opinion of Ibn Rushd as highlighted in the book of **Bidayatul Mujtahid wanihayatul Muqtasid** volume 2 at page 55.

Meaning:"They (all jurists) agreed that residence is to be provided by the husband, because of a text laid down for its obligation in the case of a

فإنهم اتفقوا على أن الإسكان على الزوج للنص الوارد في وجوبه للمطلقة الرجعية:

" وأما لمن تجب النفقة ؟ فإنهم اتفقوا على أنها تجب للحرة الغير ناشز. واختلفوا في الناشز والأمة. فأما الناشز فالجمهور على أنها لا تجب لها نفقة " .

wife whose divorce is revocable. They agreed regarding the wife for whom maintenance is necessary that it is obligatory for the free-woman, who is not recalcitrant. About the recalcitrant woman, the majority agreed that maintenance is not due to her". This translation is copied from the book of Distinguished Jurist's Prime vol. 2 p64 by Prof. Imran Ahsan Khan Nyazee.

See also the Book of **Maliki** Law short- commentary on **Muktashar Khaleel** by Ruxton at P. 149, where he held that; *'refusal to allow conjugal relationship removes maintenance'*

We took judicial notice that the appellant who alleged lack of conjugal relationship did not adduce evidence to substantiate this claim what is alleged but not proved goes to no issue for the court determination. ***'Albayyinatu 'ala mudaii'*** **"البينة على المدعي"** *"The burden of proof is on he who asserts"*

This general principle is sterilized by the author of the book of **Tuhfatul Hukkam,** at paragraph 23-24.

"والمـــدعي فيه لـــه شرطان

Meaning:"And the claim of the plaintiff must satisfy two

conditions; Identifiability of what it is, and explanation".

"The plaintiff shall be required to adduce evidence in proof of his claim; his uprightness or otherwise notwithstanding".

تحقق الدعوى مع البيان"

والمدعي مطالب بالبينة

وحالـــة العموم فيـــه بينة

The duty to prove lack of conjugal relationship is on the appellant as required by Islamic law. It could be a sense of high irresponsibility, lack of fear of Almighty Allah and His noble Prophet (peace be upon him) that a husband of five children was not feeding them for an unproved allegation of lack of conjugal relationship but also abandoned her with children.

This principle is contained in the book of **Alqawaninul fiqhiyat** by **Ibn Juzi'** vol.2 pg192-193 chapter on maintenance.

Meaning :'The necessity of maintaining a male child is compulsory until he reaches maturity while of a female child until she marries'

"ويستمر وجوب النفقة على الذكر إلى البلوغ على الأنثى إلى الزواج بها" .

انظر القوانين القفهية لابن جزي باب النفقات جزء 2, صفحة 192–193

Based on the foregoing, it is therefore not permissible for the appellant to refuse to maintain the respondent and the children of the marriage for unproven allegation of lack of conjugal relationship, and we so hold.

The appellant equivocally admitted before the court that he agreed to be paying Five Thousand Naira only (N5,000.00) every

month for the maintenance of the five children this is binding on him in line with the general principle of Islamic law which stipulated thus;

"ومن اعترف بحق لزمه الأصل في الإقرار قوله (ص) قل الحق ولو كان مراً " . (حديث صححه ابن حبان في حديث طويل).

انظر كتاب الأفضية وما يتعلق بها في كتاب أسهل المدارك شرح إرشاد السالك فصل الشهادة جزء **3** , ص **212**.

Meaning:"Whoever admits other persons right over him is bound to discharge it, this rule is an admission which is derived from the prophetic hadith; State the truth even if it is bitter" This hadith was authenticated by Ibnu Habban. See the book of Ashalul Madarik on Irshadu Salik the chapter on adjudication and related matters particularly topic on evidence vol.3 pg 212.

See also the book of **Tuhfatul Hukkam** paragraph 406.

ومالك لأمره أقــر في صحته لأجنبي اقتفي

Meaning:"A matured sane person admits any right in favour of other party is bound by it"

See also the book of **Tabsiratul Hukkam** on admission vol. 2 pg 56.

Throughout the record, the appellant was not able to dislodge, discredit or challenge the evidence or the credibility of he respondent's witnesses. We hold that the respondent had satisfied the requirement of Islamic Law of evidence

We observed that the respondent did not unequivocally specify her claim which amounted to One Hundred and Sixty Thousand Naira only (160.000.00) It is the principle of Islamic law that claims must be unequivocal and specific. We refer to paragraph 23 on **Tuhfatul Hukkkam** (supra). Furthermore, the court did not give a detailed decision on how it came to the award of Five Thousand and five Naira only (N5,005.00) and Fifteen Thousand and five Naira only (N15,005.00) as compensation awarded. It is on record that the respondent claimed maintenance and feeding for eleven years, while three witnesses gave evidence of five years; PW1 said 5 years, PW2 said 5years, while PW3 said 5years. But the court decided and held that the respondent was claiming for six years. It is not clear how the court arrived at this. In the same vain, we observed that the court did not consider subsequent maintenance allowance for the unmarried children of the marriage which is the duty of the appellant and as claimed by the respondent.

Court is bound by injunction in the Holy Quran and Hadith of the noble prophet Muhammad (peace be upon him) to act only on admissible evidence properly adduced before it and not on conjunctures.

We refer to the authority in the book of Tuhfatul Hukkam :

Meaning:"The duty of any judge is that once right of party before him is established he must not hesitate but give his decision. This is the consensus of the Jurists." We refer to the book of Tuhfatul-Hukkam Paragraph 42.

"وفي الشهود يحكم القاضي بما

يعلم منهم باتفاق العلما "

راجع تحفة الحكام س 42

Therefore judges are forewarned by Almighty Allah as follows.

Meaning:"Adjudicate among them according to what Allah has revealed, and do not follow their errand views' – Al-Maidah Q 5:49.

"وأن احكم بينهم بما أنزل الله ولاتتبع أهواءهم ".

سورة المائدة آ ية 49

We hold that the lower court was wrong when it held that the respondent was not entitled to maintenance for lack of conjugal relationship, even though there was no evidence as to the actual period in question when they both divorced, for the court to compute time. Court is not father Christmas and it is not expected to go in the voyage of discovery.

In the end, we found that the amount of five Thousand Naira only (N5,000.00) monthly for feeding / maintenance of the five children which was unequivocally admitted by the appellant is binding on him from the date of the judgment of the trial court on 26/10/2010 and henceforth. We so hold.

Furthermore payment of subsequent school fees of the five children hitherto admitted by the appellant is binding on him. We so hold.

The award of five Thousand five Naira only (N5,000.00) being amount of school fees previously paid by the respondent and upon which receipt was tendered and admitted as an exhibit should be refunded by the appellant to the respondent. We so hold.

The appellant's appeal lacks merit and it is hereby dismissed. While the respondent's cross appeal is meritorious and is hereby allowed in the above terms.

SGD SGD SGD

A.A. OWOLABI	I.A. HAROON	A.A. IDRIS
Hon. Kadi	Grand Kadi	Hon.Kadi
12/01/2011	11/01/2011	12/01/2011
17/12/1432AH	17/12/1432AH	17/12/1432AH

(2) 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 THE 13TH DAY OF JANUARY, 2011.

BEFORE THEIR LORDSHIPS:-

I.A. HAROON - GRAND KADI

S. M. ABDUBAKI - HON. KADI.

A.A. OWOLABI - HON. KADI.

APPEAL NO. KWS/SCA/CV/AP/IL/08/2010.

BETWEEN

ALHAJI ISSA ALABI USMAN - APPELLANT

AND

1. MALLAM MUHAMMD ALABI
2. ALHAJI HUSSAIN SAID } **- RESPONDENTS.**
3. ALAHJI SALIHU KAREEM

principle:

- A party suit or claim will be entertained by Court if and only if such a party has inconsistent claim before the Court.

STATUES/BOOKS REFERRED TO:

- Nasariyatul/Dawa Bayna Sariatul Islamiyah Wal-Qunun Mura Faat Madaniyyah wa Tijariyat by A.D. Muhammed Naeem Yaseen P. 383.

JUDGMENT: WRITTEN AND DELIVERED BY S.M. ABDULBAKI

This case is an appeal against the ruling on the Notice of preliminary objection delivered on 20th May, 2009 by the learned judge of the Upper Area Court No. I, Ilorin. The appellant herein was the 1st defendant in the lower court in a case instituted by the plaintiff, Mallam Muhammad Alabi for himself and on behalf of Abagun family of Gaa Ubandawaki Village Via Sapati–Oko Asa

Local Government Area. The case was instituted against the 1st defendant/appellant and two others jointly and severally for

(1) declaration of title to land on a piece of land measuring 8.22 Hectares of the land situate at Alagbede, Ita Alamu Ilorin in Ilorin – South Local Government Area shown and marked `B' in survey plan No.MISC/204 of July, 1997 prepared by A.F. Ogundele, Kwara State Surveyor General;

(2) perpetual injunction and

(3) damages for various act of trespass to the plaintiff's family land by the defendants.

When the case, which was transferred back to Upper Area Court 1, was mentioned before the trial Upper Area Court 1, on 26th November, 2008, the defendants denied liability and the case was slated for hearing on 17th December, 2008, but due to some other events/reasons the case was adjourned to 8th April, 2008 for hearing of the preliminary objection filed by the appellant against the case on the premise that the case has been caught by the principle of *Res Judicata.* The trial court heard the arguments for and against the application on the plea of ESTOPPEL *per rem judicata*. On 20th May, 2008, the trial court delivered its ruling and dismissed the preliminary objection.

The appellant was not satisfied with the ruling of the trial Upper Area Court and on 7th April, 2010, by leave of this court, filed Notice and Ground of Appeal against the ruling. He filed the following three (3) grounds of appeal reproduced as follows:-

GROUNDS OF APPEAL

1 . The trial court erred in law in overruling the objection of the appellant herein when the matter of the case had been litigated

to finality before a competent court thereby coming to a wrong conclusion which had occasioned a substantial miscarriage of justice.

PARTICULARS

(i) The court of appeal had heard and pronounced up on the subject matter of the litigation in favour of the appellant.

(ii) There was no appeal against the decision of the court of appeal thereby renders (sic) it a final decision.

(iii) The trial court was wrong in holding that it possessed the requisite jurisdiction to entertain the case.

(iv) The decision of the trial court had occasioned a great miscarriage of justice.

3. The trial court erred in law in holding that the plaintiff/respondent possess locus standi to institute and maintain the action when the higher court had decided to the contrary thereby coming to wrong decision which occasioned a grave miscarriage of justice.

PARTICULARS

(i) The court of appeal had had earlier found that the plaintiff/respondent lacked *locus standi* in respect of the subject matter now on appeal.

(ii) There was no appeal against the express holding of the court of appeal.

(iii) The decision of the lower court bothered on judicial impertinence and rascality deprecated by higher court of the land.

(iv) The decision has occasioned a miscarriage of justice on the appellant.

4. The trial court erred in law in dismissing the appellant's objection on issues of the suit being an abuse of court processes thereby coming to a wrong decision

PARTICULARS

(i) It is an abuse of court process for a plaintiff/respondent to seek to re-litigate

The matter that has been decided by the higher court, before a lower court.

(ii) The decision of the trial court on this aspect of the preliminary objection was perverse.

(iii) The trial court ought to have dismissed the plaintiff's action on ground of abuse of court process.

On 15th December, 2010 when this appeal came up for hearing, Chief D. O. Bello, appeared for the appellant. Saliman Jawondo, Esq. with Numan Sulyman, Esq. appeared for the 1st respondent, M.K. Temimu Esq. appeared for the 2nd Respondent and A.M. AbdulKareem Esq. for the 3rd Respondent.

The appellant's counsel in arguing the appeal, submitted that he has two issues for determination. He said the first issue is on principle of *Res judicata* and the second issue is on *Locus standi.* On the first issue, he submitted that distribution of the family land had been settled by this court in its decision in appeal No. KWS/SCA/ CV/AP/IL/01/97, where this court after directing surveyor General to survey the land in question, held that the area of the land mark `A' belongs to the family. While the area marked `B' belong to the plaintiff, i.e. the appellant herein based on the document, MISC/2004. He submitted further that the decision of this court in the mentioned case has not been appealed against. He therefore argued that the respondent cannot re-litigate the issue already decided by this court. He referred to page 19 of the record

of proceedings last paragraph thereof and said that the basis of his objection before the lower court was that the respondent cannot go back to the lower court on the issue already decided by this court. He said also that the Court of Appeal, Ilorin division held that the respondent could have gone to higher court instead of going back to the lower Court.

He therefore said that, that is why the case of the respondent was said to have been caught up by the principle of res judicata and that is why he was praying that the lower court has no jurisdiction on a matter which has been decided by this court.

On the second issue, locus standi, he submitted that since this honourable court has decided the case, the respondent has no locus standi to go back to the lower court. He then came up with the following prayers:-

To allow the appeal

1. To stop the lower court from going on with the case before it and.
2. An order to dismiss the case of the plaintiff/1st respondent at the lower court.

The counsel to the first respondent Salman Jawondo, Esq. started his submission with the prayer to this court to dismiss the appeal. He submitted that there is only one issue that arises from the three grounds of appeal filed by the appellant. He said that the issue is whether or not the trial Upper Area Court was right in its decision or conclusion that the judgment of the court of Appeal in appeal NO.CA/IL/22/2003 – Alhaji Issa Alabi Usman Vs. Mallam Muhammad Alabi Usman marked exhibit Usman1on pages 14-30 of the record, bars the plaintiff/1st respondent action from the lower court. He said further that the decision of this court in appeal NO. KWS/SCA/CV/IL/1/97 – Alhaji Salihu Kareem Vs. Issa Alabi is a

case fought by the three defendants at the lower court who are now the appellant, the 2nd and 3rd respondents respectively before this court. They are of the same family. The first respondent was never a party to that appeal. The parcel of land in that appeal in dispute is the land marked `A' in the survey plan – MISC/204 and it is not the same as the land involved in this appeal. This is because the land involved in this appeal is the one marked `B' in the same Survey Plan. He referred to page one of the record. He said further that the land in 1997 appeal is a different one and the plaintiff/respondent was never a party in that earlier case fought before this court. To this extent, he argued that the appellant's counsel's submission that the plaintiff/1st respondent should have appealed to the court of appeal is wrong because the plaintiff/1st respondent was never a party in that case and the judgment in the case does not affect him. He submitted that the lower court is right in its decision that the judgment of the Court of Appeal does not constitute estoppels. He referred to pages 76 paragraph 4 and page 77 line 27 and page 78 of the record of proceedings. He pointed out that since the appellant's counsel in his submission before this court, has agreed that what constitutes estoppels is the judgment of this court and NOT the judgment of the Court of Appeal, involved in this case, then by that position of the appellant's counsel, he urged this court to dismiss the appellant's appeal.

M.K. Imam Temimu Esq. on behalf of the 2nd defendant/2nd Respondent, submitted that he has four issues to argue. One, is whether the case before the Trial Upper Area Court was fought on the basis of res judicata. Two, whether the plaintiff, at the lower court, has locus standi to commence action there at. Three, whether the lower court was right to overrule the preliminary objection and four, whether the appellant has suffered miscarriage of justice by the ruling of the lower court.

In arguing the issues, the learned counsel submitted that the issue before the trial Upper Area Court most especially the judgment of the Court of Appeal as contained in pages 14 to 30 of the record of appeal was based on the objection of the counsel to the 2nd defendant/appellant on the High Court case which challenged the ruling of the High Court of Justice of the Court of Appeal, Ilorin. The ruling of the High Court was appealed at the Court of Appeal, Ilorin judicial division which decided that the respondent in the Court of Appeal, who is also the 1st respondent before this court, has no locus standi to institute the action before the High Court because the matter is an Islamic Personal law. This assertion is clear in the judgment of the Court of Appeal. He referred to page 17 of the record lines 23- 26 and page 18 lines 1 and 2 as well as pages 27 and 28. He submitted that the appellant cannot be allowed to make a U turn to say that the matter has been finally decided by the Sharia Court of Appeal. He made reference to page 18 paragraphs 2, 3 and 4 to show that the Court of Appeal was mindful that the matter before it was an interlocutory appeal. He said further that what the counsel said about page 19 of the record was not correct because it was the argument of counsel and not the dictum of the Court of Appeal. He referred the court to paragraphs 2 and 3 of page 19 and page 20 paragraphs 2 to 3 of the record of proceedings to get the true intendment of the Court of Appeal. It is also his submission that ordinarily, the Islamic Law courts do not allow any manner of judicial practice that will truncate or prevent a party from bringing his case before the court. The principles of functus officio or principles of res judicata is at variant with Sharia Law. It is not allowed in Islamic Law. He referred to the case of MALLAM AKIBU & 5 ORS VS. MRS IYABO IMAM (2006) Sharia Court of Appal Annual Report page 68 with appeal NO.KWS/SCA/CV/ AP/ IL/05/2005. In the alternative, he submitted that in case this court considers that the principle of res judicata is applicable in Islamic law, certain

condition must be met by the party relying on the principle. That is, the party must produce before the court, the record of proceedings in which the matter has been finally decided in order to show that the parties and the subject matter are the same. He cited the case of ALHAJI HARUNA USMAN VS. UMAR GARBA KUSFA and 7 ORS (1992) 8 NWLR PART 258 Page 247 at page 253. He submitted that the appellant has failed to produce the record of proceedings of either the High Court nor the Court of Appeal to show that the court decided the case to finality. He urged this court to decide the first issue in favour of the respondent that the case at the lower court is not caught by the principle of res judicata.

On the second issue, whether the plaintiff at the lower court has the *locus standi*, it was submitted by the counsel to the second respondent that the court of appeal made mention of the word *locus standi* with reference to the fact that the 1st respondent only lacked *locus standi* to institute his action at the High Court because the issue involved in the land in question are purely matters of Islamic Personal law. He referred to page 18 of the record paragraph4 praying the court to resolve this issue in favour of the respondent.

On issue three, whether the trial court was right in overruling the preliminary objection, he submitted that the lower court was absolutely right by overruling the preliminary objection raised by the appellant. This is because following the tenure of the court of appeal judgment, the preliminary objection at the trial court was based on an interlocutory ruling which in the interest of justice will not be allowed to truncate the plaintiff's substantive case on merit. He submitted further that if the lower court had allowed the preliminary objection it would have acted contrary to the spirit of the Sharia which is set to doing of justice to every party. He referred to the case of JIBBO *VS. ADAMA ABAKE,* Appeal No. *KWS/SCA/CV/AP/IL/09/2005* page 323 at 325 (2005) SCA Annual Report. He also referred to **Surat Zumar**,(Chapter 39) Verse 75 and

urged the court to resolve the issue number three in favour of the respondent. The counsel to the second respondent withdrew issue number four which according to him, is based on IZAR. He said that, that has been canvassed before. He finally prayed the court to dismiss the appeal and allow the plaintiff in the lower court to prove his case.

Counsel to the third respondent, A.M. AbdulKareem, Esq. started his submission by aligning himself with the issues as formulated by the counsel to the first and second respondent. He also adopted their argument and submission as his own. He added that the earlier appeal from this court cited by the appellant has no relevance with the instant appeal because the issue in that appeal is different from the issue in the instant appeal. He said further that it is erroneous on the part of the appellant to say that the subject matter of this appeal had been litigated to finality. He referred to page 20 of the record last paragraph. He submitted that institution of this case at the lower court by the plaintiff/1st respondent is in line with the decision of the court of appeal in the appeal No.CA/IL/22/28/2003. He referred to page 77 lines 22 – 30. He then urged this court to hold that the learned trial judge was right when he held that he has jurisdiction to hear and determine the case as filed by the 1st respondent. He referred also to page 78 lines 22 – 31 of the record of proceedings to show that there is no where the court of appeal held that the 1st respondent could not institute action in the lower court. This is because the issue involved in this case is an issue of gift intervivor. He then urged this court to dismiss this appeal of the appellant as unmeritorious, time wasting and attempt to delay the case.

Chief Bello, Esq. on his general reply to all the submissions of the learned counsel to the respondents pointed out that the submission of the learned counsel to the plaintiff/first respondent to the effect that the 1st respondent is not a party to the earlier appeal

decided by this court and thus could not have appealed against it is not correct. He argued that the fact that the 1st respondent was not a party to that appeal is immaterial because that matter deals with the same subject matter involved in this appeal.

On our part, we have gone through the record of proceedings and considered the submission of the learned counsel to the parties in this appeal. We wish to observe that the appellant in this appeal made on the principle of *Res judicata* before the lower court and this court. But unlike the proceedings in the lower court, the proceedings in this court took a strange method. This is because the practice in any court is for the party who takes matter to court to substantiate or prove it in the manner he has indicated to the courts and the opposing parties. The strange method this appeal took is that the appellant filed three (3) grounds of appeal before this court challenging the ruling of the lower court on the premise that the said trial Upper Area Court 1, Ilorin reached its decision in flagrant deviation from what the Court of Appeal Ilorin division held or did but the same appellant's counsel while conducting the proceedings in this appeal before us abandoned the decision of the Court of Appeal as the basis of his appeal but dwelt deeply on the decision of this court in appeal decided in 1997. This means that he abandoned his Notice and Grounds of appeal. In any proceeding on appeal in this court, the appellant is like the plaintiff in any trial court and thus must prove his appeal before the respondent is called upon to react to the appellant's submission. One wonders what informs the procedure adopted by the appellant's counsel in this appeal. The question now is can a party be allowed to present different facts or different evidence and procedure in different courts on the same matter. The answer in our view, is No. This procedure adopted by the appellant's counsel is enough for us to refuse his appeal. This is in line with Islamic law and procedure.

The majority of Muslim jurists in these circumstances provide as follows:

A party's suit or claim will be entertained by court if and only if such a party has not earlier put forward an inconsistent claim before the court.

See pages 383 of the book Nazariyyat Al-Dawa Bayna Sharriatul Islamiyyah Wa Qanuunl Murafaatl Madaniyyah Wa ***Tijjariyyat by – A-D Muhammad Naeem Ya'seen.***

ذهب معظم الفقهاء إلى أنه يشترط في الدعوى لكي تكون مسموعة أن لايسبق من المدعي ما يناقض دعواه .

(راجع نظرية الدعوى بين الشريعة الإسلامية وقانون المرافعات المدنية والتجارية)– الأستاذ الدكتور/محمد نعيم ياسين ص. ٣٣٨

However, despite that inconsistent claims which was presented, since there has been argument for and against the ruling of the lower court, we shall now try to albeit briefly look at it and make our decision. The issue raised by the appellant is that the lower court erred when it overruled the preliminary objection raised by him. The appellant in his argument said that the preliminary objection ought to have been sustained because the Sharia Court of Appeal Division Ilorin has decided to finality in the appeal NO. KWS/SCA/CV/AP/IL/01/97 the issue of distribution of the family land and that had been settled and there has been no appeal against this decision, so by the doctrine of *estoppel*, the 1st respondent could not go before the lower court to re-litigate the same case.

But learned counsel to the 1st respondent submitted that the appellant's argument that the 1st respondent should have appealed to higher court is wrong because he the 1st respondent was never a

party in that appeal. He said further that since the appellant's counsel has agreed in his submission before this court that it is this court's previous decision that should constitute *res judicata*, and not the decision of the Court of Appeal, then the argument of the appellant on *res judicata* must fail. Similarly, the 2nd respondent's counsel also said that since the appellant has failed to produce the judgment where the issue in this case has been held to finality the issue of r*es judicata* must fail. Again, he said that the judgment of the Court of Appeal is an interlocutory and not final one. This is also the stand of the counsel to the 3rd respondent. In our view, the argument of the three counsels to the three respondents is preferred to that of the appellant. To that extent, the issue of whether the case at trial Upper Area Court 1, Ilorin is caught by the principle of *res judicata* is hereby resolved in favour of the respondents and against the appellant. This is because the judgment of the Court of Appeal is an interlocutory one. The previous judgment of this court deals with a different land and not the land involved in this appeal.

On whether the 1st respondent has *locus standi*, the argument of the appellant's counsel that since this honourable court, in the earlier appeal quoted above has decided the case to finality the 1st respondent has no *locus standi* to institute the case at the lower court. The answer to this by the respondents' counsel is that the decision of the Court of Appeal does not bar the 1st respondent from instituting the case before the lower court but it held that it is the appropriate court, then, the 1st respondent has *locus standi.* This is because the appeal decided by this court in 1997 does not concern with land involved in the substantive case. Moreso the Court of Appeal Ilorin Division in exhibit Usman 1 favours that the 1st respondent files his case before the lower court which has jurisdiction and power to apply Islamic Personal Law. From this, and from what has been said by us above, we hold the view that the 1st respondent has *locus standi* to institute the case before the lower

court, as he did. So this issue is also resolved in favour of the respondents.

As regards whether the lower court was right in dismissing the preliminary objection as filed by the appellant, from the issues which we have held in favour of the respondents, it is our considered view that the lower court was right in its decision dismissing the preliminary objection. Consequently, we affirm the decision of the lower court and dismiss this appeal. We order that the plaintiff/1st respondent herein is hereby allowed at the lower court to go on with prosecution of his case which was held up by this appeal and which is hereby dismissed for lack of merit.

Appeal fails and is dismissed.

SGD	**SGD**	**SGD**
(S.M. ABDULBAKI)	**(I.A. HAROON)**	**(A.A. OWOLABI)**
KADI,	**GRAND KADI,**	**KADI,**
13/01/2011	**13/01/2011**	**13/01/2011.**

(3) IN THE SHARIAH COURT OF APPEAL OF KWARA STATE OF NIGERIA IN THE SHARIAH COURT OF APPEAL IN THE ILORIN JUDICIAL DIVISION HOLDEN AT ILORIN ON THURSDAY, 27TH DAY OF JANUARY, 2011

BEFORE THEIR LORDSHIPS:

I.A. HAROON - GRAND KADI

A.A. IDRIS - HON. KADI

A.A. OWOLABI - HON. KADI

APPEAL NO. KWS/SCA/CV/AP/IL/06/2010

BETWEEN:

MR ABDULHAMMED GBIGBADUA - DEFENDANT

AND

MRS FALILAT IMAM IBRAHIM - RESPONDENT

principles:

1. He who asserts must prove.
2. O you who believe Avoid much suspicious indeed some of suspicious are sins.
3. "You have a prior right to bring him up as long as you do not remarry.

STATUES/BOOKS REFERRED TO:

1. Q2:233

JUDGEMENT WRITTEN AND DELIVERED BY A.A. IDRIS

Mrs. Falilat Imam Ibrahim the plaintiff / respondent sued Mr. AbdulHammed Gbigbadua the defendant / appellant for custody of her children and their maintenance at the Area Court I No. 1 Centre Gboro in Suit No: 422-2008 and case No. 39 dated 22-1-2008 when the case came up before the trial court on the 22nd January, 2008, the petitioner / respondent and her counsel S.A. Muhammed Esq. were present in court while the defendant / appellant was unavoidably

absent. But the Defendant / Appellant was represented by a counsel, Adisa Ololu Esq. The Plaintiff / Respondent told the court that she sued the Defendant / Appellant for custody and maintenance of her children.

According to her both of them stayed together as husband and wife for 9 year thus from 1995 to 2004 and were blessed with two children who he gave their name and ages as follows:-

1. Husnat AbdulHammed 5 years
2. Aishat AbdulHammed 3 years.

After the above submission, Adisa Ololu Esq who appeared for the defendant / appellant sought for adjournment to enable them settle the matter out of court which was granted and adjourned till 19/2/2008.

On the adjourned date, the defendant / appellant counsel also sought for another adjournment for further settlement. The case was therefore adjourned to 11/3/2008.

However, the case re-opened on 11 – 3 – 2008 and after hearing the submission of the counsel for both sides representing the plaintiff / respondent and defendant / appellant respectively the trial court awarded the right of custody to the plaintiff / respondent with the following orders as reproduced from the judgment of the trial court.

The plaintiff is awarded the custody of the two female children by name Husnah 6 years of age and Aisha 4 years of age with payment of monthly allowance of N3,000 each to the two children, that is, Husnan years of age and Aisha 4 years of age, their education, health, clothing and other important thing are

Being aggrieved with the above mentioned judgment of the trial court, the appellant appealed to this court on 11/03/2010.

The Appellant filed the following three grounds of Appeal.

GROUND ONE:

The trial judge erred in law when he held that all the defendant's witnesses are incompetent under Islamic law.

Particulars of error.

All who testified for the defendant are the defendant's step mother Alhaja Shegilola Omolehin who is about 70 years old DW1, AbdulRasheed Molid Jamiu 30 years old DW2 – Garuba Idayat, 20 years old and DW4 Habibat Omotayo, a 25 years old who is a younger aunt to the defendant.

GROUND TWO

The trial judge is in error of law when he failed to consider and evaluate all exhibits tendered by the defendants and which were dmitted in evidence particularly exhibits C1, D3 and D4.

Particulars of error.

The defendant tendered among others exhibits C1 which is the National I.D. Card of the plaintiff. Exhibits 3D, which is the picture

of the female child born by the defendant. Exhibit D4 is the court proceeding filed by the plaintiff in another suit at UAI No. Ilorin a suit for paternity filed against her by the appellant.

- If the trial judge had considered these exhibits he would have come to a different conclusion.

GROUND THREE

The trial judge erred in law when he awarded the custody of the two children Husnat and Haisat to the plaintiff despite many uncontroverted evidence which whittle or weight down the plaintiff right to custody.

Particulars of error.

- The plaintiff was not sincere and trust worthy through out her evidence in the trial she fabricated her age.
- The plaintiff could deceived the court and told the court that she has not remarried to another man.
- The plaintiff could not deny exhibit D3 and her statement in exhibit D4.

Relief Sought From The Court

a. A Declaration that the judgement of the trial court did not base on the material evidence before it and therefore perversed.

b. A Declaration that the plaintiff had lost her right of custody to the two children she bore for the defendant when they were husband and wife.

c. Allowing this appeal.

d. Order setting aside the whole judgment of the trial court for been perversed.

e. Order dismissing the plaintiff's case in it's entirely.

On the 20th June 2010, only the Respondent and her counsel were in court and both the Appellant and his counsel were absent.

The Respondent was represented by Iliyasu Saka, while Ahmad Saka appeared for the appellant.

The counsel to the Appellant submitted that in the last adjournment he raised issues regarding the errors in the proceedings i.e. typographical errors and utilization of words, which were fundamental to their case. He went further to say that he wanted the trial court to correct all the anomalies. He added that he had prepared a motion so that the correct proceedings could be properly filed. He therefore sought for a short adjournment.

In his response, the counsel to the respondent submitted that during the last sitting the court had ordered the appellant to correct clerical slips in the record of proceedings for the expeditious determination of the appeal. He submitted that on the issue of filing a motion, he believed that if the record had been corrected as rightly ordered by this honourable court during the last sitting, there would be no need for filing a motion, and what he needed to do was to tender it from the bar to avoid wasting of our precious time.

After much deliberation, the court reluctantly granted the adjournment sought by the appellant to next Ilorin session to enable the Appellant do the necessary corrections.

On the 19th May 2010, when both parties were supposed to appear in the court, the parties were absent and according to the record put before us by the Registry, the parties were duly served by the court Bailiff and there was no reason given for their absence, consequently the case was adjourned to our next Ilorin session.

On the 8th December, 2010 the appellant was in court but the respondent was represented by her counsel, Hammad Saka Esq. The

counsel to the respondent said that during the previous adjournment the counsel to the appellant was directed by the court to liase with the registrars of the trial court to correct the mistakes in the record of proceeding.

However, the said record, according to him, had been corrected and filed in the court registry. The court therefore ruled that the counsel should bring the corrected copy which was adopted after a perusal.

After the adoption, the appellant urged the court to give them a definite date for hearing. He further submitted that he had just tendered the corrected copy. In his response, the counsel to the respondent urged the court to discountenance the submission of the appellant counsel and to refuse his application for an adjournment. He further submitted that the grounds of his objections were premised on the following.

A- That at the last sitting the court ordered that the counsel to the appellant make necessary correction. As a result of this, that proceeding was adjourned and since the necessary corrections had been made, there was no need for any adjournment.

B- That the said mistakes had been corrected since August, 2010 (that is barely four months ago). Based on the above reasons, he urged the court to continue with the case in the interest of justice.

On hearing this, the court reluctantly granted the application for adjournment. On the adjourned day, the appellant was absent while the respondent was present. However, Hammad Saka appeared for the appellant while Iliyas Saka appeared for the respondent respectively.

The counsel to the appellant submitted that the notice of the appeal was filed on the 11th day of April, challenging the decision of trial Area Court Grade I No1 of Centre Igboro, Ilorin delivered by Hon. Judge Y.A. Karim. He further submitted that the notice of appeal contained 3 grounds of appeal. He said that they would be relying on these grounds.

Ground I. He said that he proposed one issue for determination thus: DW II, III and IV were disqualified under Islamic Law to testify as witnesses, which would render their evidences incompetent.

He further submitted that in the judgement delivered in the trial court as shown on page 52 of the record of proceedings paragraph four where the trial judge held that all witnesses of both plaintiff and defendant were incompetent to testify as required by the Islamic Law.

He further said that the evidence of DW II was contained on pages 41-43 of the record of proceedings while the evidence of DW III was contained on pages 43 – 44 and the evidence of DW IV was contained on pages 45 – 49 of the record of proceeding. While elaborating on the status of those who testified for and against, he submitted, that DW II was a male who gave his age as thirty years and was described by the trial court as a servant of the appellant. He then referred the court to lines 19 page 41. He further submitted that under Islamic Law a matured person like DW II who was not related to the appellant and had no interest to serve in the suit was competent to give evidence and urged the court to hold same.

On DW III, he referred the court to page 43 where he referred to a lady who had given her age as twenty years and an apprentice under the appellant as at the time she was testifying. He referred the court to page 43 line 24. In his further submission, he said that it was an error on the part of the trial court to have disqualified that

witness without any legal disability attributed to her by the trial court. He therefore urged the court to set aside the findings of the trial court as regards the competence of DW III.

On DW IV, he referred the court to pages 45 – 49 where he said that the appellant was her uncle and student of Kwara Polytechnic Ilorin, he said the trial court also rendered her incompetent and failed to evaluate and consider her evidence. He submitted further that since the trial court gave no reason on facts and law which militated against the competence of DW IV, he then urged the court to set aside the findings of the trial court and urged the court to allow the appeal.

On ground two, he said that only one issue was formulated thus:

Whether the failure of the trial court to consider and evaluate the exhibits in this case does not occasion the miscarriage of justice?

He submitted that at trial court the appellant tendered the following exhibits, which were admitted by the court. According to him, CI was National Identity Card obtained by the respondent and exhibit D 3 which was the picture of a female child born by the respondent after divorce while Exhibit D3 was a proceeding filed by the appellant at the Upper Area Court One, Ilorin claiming the paternity of one Kemi. This, according to him, was admitted by the trial court. He went further to submit that a man called Imran was joined as second defendant.

He therefore urged the court to look at exhibit 4 and make a proper finding on that exhibit. On exhibit CI, the respondent claimed that she was born in 1976 while in her testimony before the trial court, she said that she was 24 years old based on the above. He submitted that if the trial court had properly considered exhibit C1, the trial court would have reached conclusion that she was not sincere and not a person to be trusted. He went further to say that if

that was established, the respondent would have lost her right to custody. He supported his argument by quoting the decision of this honourable court by referring the court to the case of FATIMAT NDAGBA Vs MOHAMMAD KUDU in appeal KWS/SCA/CV/AP/PG/05/2002 which was reported in our Annual report of 2003 pages 22 – 29. He then urged the court to hold that since the respondent was not trustworthy, she had lost her right to custody. He then urged the court to allow this appeal under that ground.

On ground 3, He formulated one issue thus:-

Whether on the strength of the material evidences before the trial court, the respondent had not lost her right to custody?

According to him, he submitted that there were sufficient evidence before the trial court which would have motivated the court to hold that the respondent had lost the right to custody. And in buttressing his stand, he said that under Islamic Law a woman like the respondent herein would lose her right to custody if she was remarried after the divorce. He further submitted that he placed his reliance on the decision of this Honourable Court in the case of AHMAD PETTER Vs FATIMAT reported in the year 2004 Annual Report on page 152 especially at page 155 as contained in appeal No: KWS/SCA/CV/LF/08/2004. On the above he submitted that on page 48 of the record of proceedings lines 43 – 49 there was evidence of DW 4 that the respondent had remarried and that she was heavily pregnant as at the time of the trial at the lower court coupled with exhibit D3 and D4 which included a picture of a female child which was called KEMI, the respondent had definitely according to him, lost her right to custody and urged the court to allow the appeal and to set aside the decision of the trial court and dismiss the respondent's claims. He submitted that to worsen the situation, the trial court did not give a definite order regarding the

claims of the respondent in the trial court. The learned counsel then referred the court to page 53 especially the last six lines of that page.

He submitted further that the order made by the trial court was at sharp variance with the decision of this court in which the principle of Islamic Law was enunciated.

He referred the court to page 52 of the record of proceedings paragraph 8. To him, the trial court had no right to apply a wrong law by relying on section 71 (1) of matrimonial causes, which to him was an English law and as such, he did not base his judgment on Islamic principle, but what he felt expedient. He therefore urged the court to allow the appeal and dismiss the judgment of the trial court.

Lastly, he submitted that the mother of the respondent was not competent to testify for her daughter because she had vested interest or benefit to derwe from the subject matter. He referred the court to page 16 of the records of proceedings. He finally urged the court to set aside the judgement of the trial court and allow the appeal.

In his response to the issues of ground of appeal as argued by the learned counsel to the appellant, he adopted the issues as argued by the appellant counsel and urged the court to dismiss the appeal in its entirety. According to him, he submitted that he wanted to reply in seriatim.

On issue No1, he submitted that all the witnesses of the appellant therein thus DW1 and DW4 were not competent witnesses under the Islamic law the fact being that with the exception of DW 1 and DW4, other witnesses were the servants of the appellant therein, and by the nature of a servant testifying in favour of his master, the testimony could not be admissible in Islamic law because the appellant has dominion on the servants and, as such, they would not want to testify against him.

To him, their testimony would definitely create suspicion and no reasonable court or tribunal would rely on their testimony. He therefore referred the court to page 41 of the record of proceedings of the trial court on the issue of DW1, He submitted that it was bad under Islamic Law for a step mother to testify in favour of the appellant herein, since she had an affinity relationship with the appellant. In view of that he informed the court that testimony corroborated the defendant statement before the trial court.

He further submitted that the evidence of DW4 who had blood relationship with the appellant could not be admitted. According to him that was based on the fact that she was related to the appellant by the way of consanguinity. He therefore urged the court to hold the findings of the trial court in favour of the respondent.

On issue two, the respondent submitted that exhibit D4 which was heavily on whether the issue was raised had no relevance in law for the following reasons.

(a) The said exhibit was not certified.

(b) That the court process was tendered to the respondent from the bar.

(c) That there is disparity in the age of the respondent in her identity card (Exhibit C1) and the statement of the respondent before the trial court could not make the respondent a non-trustworthy person.

On the issue of disparity in age, he submitted that the issue of disparity in age was a mistake, which was human and as such she could not be held responsible for this mistake. After all, he said that the age of the mother was not important in the issue of custody, in as much as she is adult.

He further submitted that exhibit D3, which was a picture of a purported Kemi only raised a suspicious situation, which was not

allowed under Islamic Law. To him that was the reason why the trial judge failed to make any pronouncement on the issue of D3. He further urged the court to hold that the findings of the trial court as regards the entitlement of the respondent to the custody of the two children in dispute were in order.

In order to support his argument on the above, he cited the case of FATIMA NDAGBA vs MOHAMMED KUDU supra. He therefore urged the court to sustain the findings of the trial court. Furthermore, he said that exhibit B1 and B2 tendered by the appellant at the trial court conspicuously indicated that the counsel to appellant wanted to utilize that avenue to portray the respondent as untrustworthy person during the pendency of the trial at the trial court. He therefore urged the court to hold that exhibit B1 and B2 tendered by the appellant were aimed at denying her right to custody of the two children.

He further submitted that in exhibit B2 the appellant stated her age as 57 years where as in the record of proceedings during the testimony at the trial court, she said she was born in 1951. The counsel to the respondent therefore referred the court to page 29. He prayed the court that her statement before the trial court could not be relied upon.

On the whole, he submitted that in spite of all the exhibit, it was his submission that the learned judge was right to have done what he did by relying on section 23 and 61 of the Law of Kwara State. He finally urged the court to resolve this issue in favour of the respondent.

On issue 3, the counsel to the respondent submitted that the respondent herein had not lost the right of custody of her two children in controversy. According to him, that was due to the fact that throughout her statement at the trial court she did not mention that she had remarried. He referred the court to pages 4 to 10 of the

record of proceeding especially during cross-examinations at trial court, where she unequivocally told the court that she had not remarried.

On the controverted statement of the respondent, he urged the court to hold that the respondent was entitled to the right of custody of her two children in question.

The learned counsel further submitted that the testimony of DW IV was inadmissible in law because it could not corroborate exhibit DW IV which was a court process and on that note exhibit D3 could not be sustained and used against the respondent as being remarried. He elaborated further that the order made by the trial court was in order, because it was crystal clear at page 53 that the trial judge had awarded the right of custody of the children in question to the respondent. He then, referred the court to page 53 line 15 where the order was clearly written.

He submitted that the authority cited by the learned counsel on Salmata Khadijat supported that the judgment was definitely free of any ambiguity. He equally submitted further that the complain of the Appellant on the wrong law which centred around matrimonial causes act could not convince this honourable court to allow the pending appeal. He further submitted that this Honourable court had discretion to remove any law cited by any counsel before it, which was not in conformity with Islamic Law. He therefore urged the court to sustain the findings of the trial court and further urged it to be persuaded by the Annual Report of this Honourable Court in case of Olushola Vs Salimata Jimoh which was reported in the year 2006 page 117 especially pages 119 – 121 respectively in case No; KWS/SCA/CV/AP/IL/08/2005. He therefore, urged the court to dismiss the appeal because it lacked merit and above all it was frivolous.

In his illustration, he said that assuming without conceding that if neither of the parties was entitled to the custody of the children, the right of the custody should be transferred to the grandmother and according to him, father was in the sixth position when it comes to the custody of a child. He therefore urged the court to hold that assuming the mother had lost the right of custody it should be awarded to the grandmother.

In his brief response, the counsel to the appellant emphatically stated that the law of Area Court Supra cited by the learned counsel to the respondent was not relevant to the case at hand. He further explained that section 61 bordered on guardianship not on custody and section 23 (1) elaborated the powers of Upper Area Court. He therefore urged the court to discountenance the submission of the counsel to the respondent on the above.

Finally he urged the court to discountenance the issue of Exhibits B 1 and 2 because they were not issues before this honourable court.

We have critically gone through the record of proceedings and carefully listened to both counsel for an against, in the same vein, we have equally considered all the attached exhibits, and are of the view that the main issue for determination is centered around custody of child. In the course of our discussion we will resolve the issue raised in seriatim.

In dealing with the first issue relating to the evidence of DWII, III and IV. Most of these witnesses are either servant, mother and apprentice. In resolving this issue we take recourse to admissibility of evidence of relation under Islamic law. Generally, the evidence of a near relative of a party is admissible in favour of that party only if:-

(a) The witness will not derive some benefits from such evidence or.

(b) By giving such evidence the witness may not escape some harm or loss.

(c) There is no suspicion or bias in that he will not remove some defects or loss from himself or derive some benefit, for example where he is solely dependent on the party.

(d) The witness excels his peers including the party calling him in integrity except where suspicion becomes manifest from the foregoing it is pertinent to note that DW I and DW IV are not free from items (a) and (c) because of their relationship with the party involved in this suit as such their witnesses will definitely raise suspicion and as such their evidence is in admissible.

It is trite that the principle of Islamic Law is arrived at by evidence, which may be informed of an independent witness or witnesses. We therefore agreed with the submission of the counsel to the respondent that their testimony could not be admissible in Islamic Law, and we so hold.

ON ISSUE TWO

The learned counsel to the appellant formulated one issue which borders on whether the failure of the trial court to consider and evaluate the exhibit in this case does not occasion miscarriage of justice? We opined that crux of this matter is that the issue of custody has no bearing with the exhibit tendered before the trial court which include pictures of purported Kemi, declaration of age, National Identity Card of the respondent and the terminal results of the two children of the respondent. Since those items have no relevance on the issue at hand and these cannot sustain the withdrawal of the right of custody from one who has the right to it. The trial court considered these as non issue.

Although the behaviour of prospective custodian can negatively affect her right to custody, such behaviour must be so grievous as to have affected the ward under her care negatively. Such behaviour includes stealing, adultery and dishonest. The discrepancy in the declaration of age form and National Identity Card may not necessarily constitute such grievous behaviour as may affect negatively the ward under her care. We therefore hold that this is not sufficient evidence to declare her untrustworthy. We therefore agreed with the submission of the counsel to the respondent that the age of competence for custody is the age of sexual maturity, which is adult hood.

Secondarily, the issue of purported Kemi was not proved by DW IV and it is trite in Shariah Law for an evidence to be binding the statement of the witness must be certain, clear and devoid of any ambiguity.

Therefore it is trite under Islamic Law that when a plaintiff who is supposed to prove his case could not discharge the burden placed on him, such claim would be termed as none issue. Above all in the instance case since the Plaintiff / Appellant who supposed to prove his case by calling the relevant required number of witnesses failed to discharge this burden, that means that allegation was not proved as such, we dismissed this issue. See Hada vs Malunfashi (1993) 7 NWLR (Pt 303) especially part 54 paragraphs C- D.

On ground 3,

On the issue of part of laws of matrimonial causes relied upon by the trial court in its judgement, we agreed with the submission of the counsel to the appellant that the law cited was foreign to Islamic Law which only has bearing on common law. We therefore resolve this issue in favour of the appellant.

We now come to whether on the strength the material evidence before the court the respondent had not lost her right of custody. We

agreed with the submission of the counsel to the respondent that the respondent had not lost the right of custody of her two children. This is because of her controverted statement combined with the testimonies of DWIV, which could not be established.

It is a well-established Islamic Law principle that whoever asserts must prove.

"He who asserts must prove". **البينة علي المدعي**

Burden of proof under Islamic Law is that proof is complete by
(a) evidence of two male unimpeachable witnesses or

(b) evidence of one male witness and two or more female un impeachable witnesses.

In the instant case since only two female witnesses alleged that they saw a female girl and man who they could not establish their identity, the plaintiff respondent had not discharged the burden of proof on him to establish the authenticity of these assertions which are squarely against the teaching of Islam where the Quran says.

O you who believe! Avoid much suspicions indeed some of suspicions are sins: **"يأيها الذين آمنوا اجتنبوا كثيراً من الظن إن بعض الظن إثم..."**

Therefore in the absence of any proof we resolved the issue in favour of the respondent

Coming back to the heart of the matter, however, we want to examine in Islamic point of view whether it is the father that has the right to the custody of a child at the onset or the mother where there is no impediment.

The matter of the custody of the children of a broken home is not only important to the parties but also to the community at large.

Therefore, in any matter relating to the custody of a child, the interest and welfare of the child shall be the first and paramount consideration.

In resolving this very important issue we take recourse to the Hadith related to the Prophet (SAW) on how he dealt with cases brought before him. One of the key relevant Hadiths which was narrated by Abdullah B. Umar that a woman once came to the Prophet (SAW) complaining that her husband had divorced her and demanded that their son be kept by him she dramatized her situation with a poetic metaphor saying:-

"إن ابني هذا كان بطني له وهاء وثدي له سقاء وحجري له جواء وإن أباء طلقني وأراد أن ينزعه مني، فقال رسول الله صلى الله عليه وسلم: أنت أحق به مالم تنكحي".

Truly, my belly served as container for my son here and my breast served as a skin – bag (from which he sucked milk) and my lap a safe haven for him. It so happens now that his father has divorced me and desires to take him away from me. The Prophet (SAW) replied: You have a prior right to bring him up as long as you do not marry again".

Thus meaning that the mother has custodial right which she can lose if she remarries.

Also Quran 2:233 states thus:-

"…The mother should not receive harm by her offspring"

This right is not restricted to Islamic Law, for instance in the case of Odogwu Belgore. JSC as he was then said:

Welfare of child is not the material provision in the house – good cloths, foods, air conditioner ... all gadgets

normally associated with the middle class, it is more of the happiness of the child and his psychological development.

Thus the mother should not be harmed by being deprived of custody of her child. Mother's right to custody was also supported by Ibn Abba's judgment in a custody dispute when he told the father: Her Odor, her bed, and her heart is better than yours, till he grows up and chooses for himself.

In the same vein, In illustrating the reason why the mother is the fittest for custody Ibn Taymiyyah affirmed in his ruling:

As for the young (child) the mother is more fit for his welfare than the father because she is more gentle to him and more knowledgeable about his nutritional needs, carrying him and putting him to sleep she is also more patient and merciful to him.

It is pertinent to note here that if the mother is disqualified for any reason or renounces her right, the custodial right of the mother will go to the next of kin among females on the mother side i.e

- Mother	الأم
- The child maternal Grandmother.	أم الأم
- Great grand mother	الجدة من قبل الأم
- Paternal grand mother	خالة الولد(أخت أمه)
- Sister	خالة ام الولد
- The maternal aunt	عمة الأم

Thus, if the above list is exhausted then custody could be awarded to the father.

Having elaborated this much, we hold that the mother can only be disqualified on remarrying or where the mother is known to be suffering from in sanity or some kind of infectious disease, or where

the life – style of the mother is such that the child moral rectitude will be jeopardized. None of these are applicable in the instant appeal.

We feel that the mere fact of divorce or separation between husband and wife cannot be reason to deprive a child who for all purposes is totally an innocent soul who finds himself in a situation created by the refusal of the parents to live together as husband and wife. As a result, of this the mother cannot be deprived of her basic right.

Therefore, the issue is hereby resolved in favour of the respondent because the allegations made by DW IV were not established .It is a mere assertion and we so hold. We affirmed the decision of the trial court and order that the mother should take the custody of her children till they attain the age of maturity.

Appeal Fails.

SGD	**SGD**	**SGD**
A.A. OWOLABI	**I.A. HAROON**	**A.A. IDRIS**
KADI	**GRAND KADI**	**KADI**
27/01/201	**27/01/2011**	**27/01/2011**

(4) 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 7th DAY OF FEBRUARY, 2011
YAOMUL-ITHNAINI 4TH RABIUL-AWWAL 1432 AH

BEFORE THEIR LORDSHIPS:

S. O. MUHAMMAD - HON. KADI.
A. A. IDRIS - HON. KADI.
S. M. ABDULBAKI - HON. KADI.

MOTION NO. KWS/SCA/CV/M/IL/02/2011.

BASHIRAT GIWA - APPLICANT

VS

DR. JIMOH RABIU OLUSEGUN - RESPONDENT

principle:

An application would be granted if all the needed requirements are met and most especially where the respondent did not file any counter affidavit.

RULING: WRITTEN AND DELIVERED BY S.O. MUHAMMAD

Parties absent.

Abdul Rasheed Ahmed: For the applicant.

S. O. AbdulKareem: For the respondent.

Abdul Rasheed: *We have a motion on notice, undated but filed on 4/2/2011.*

Brought pursuant to order 3 Rule 7 (1)(2) (c) of S.C.A Rules Cap S. 4 Law of Kwara State, 2006 and under the inherent jurisdiction of the court.

The motion is seeking leave and order as per the file. We also have 3 grounds on which the application is (See Record).

We also have 10 paragraph affidavit (See Record).

Annexed are 4 exhibits A-D

We rely on all the dispositions of the affidavit.

We urge the court to grant our prayers as prayed.

S. O. Abdulkareem: *No objection. That is why I have not filed a counter affidavit.*

RULING:

Abdul Rasheed Ahmed Esq. argued before us that this motion on notice brought pursuant to order 3 Rule 7(1)(2)(c) of the Sharia Court of Appeal Rules, Cap. Section 4, Laws of Kwara State of Nigeria, 2006 and under the inherent jurisdiction of this Honourable Court. The motion is seeking our leave and order to allow the applicant to tender some documents admitted at the trial court which appeal is before us with number KWS/SCA/AP/IL/9/20 . This appeal in which the applicant is respondent contains the details of the trial court's proceedings.

The motion however is inched on three grounds reproduced as follows:

(1) That the document sought to be tendered are part of the documents tendered at the trial court but are not part of the record placed before this Honourable Court and they are necessary for the determination of this appeal (sic).

(2) It is to note that all documents or processes of court must be placed before your Lordships for just determination of this appeal (sic).

(3) That the interest of justice will be served by the grant of this application and the appellant will not be prejudiced thereby (sic).

The application is also supported by 10 paragraph affidavit deposed to by one Saheed Adekunle Akinola, male Muslim and legal practitioner at the law firm of Messrs Balogun, Balogun and Co. on behalf of the applicant.

The motion contains four annexures marked as Exhibits A – D. They are:

1. Hand written application to the Directorate of Area Courts seeking transfer of the case under appeal. The letter was dated 19/1/2011 and marked Exhibit A.
2. Type written letter dated 24/10/2010 by S. O. Abdul Kareem, counsel to the respondent. The letter is marked Exhibit B.
3. A notice of discontinuance of action on 30/9/2010 before the trial court and served on the appellant/respondent. It is marked Exhibit C.
4. Letter of the applicant to the Directorate of Area Court dated 29/9/2010. It is marked Exhibit D.

The applicant counsel submitted that he relied on all the dispositions of the affidavit and all the annexure and urged us to allow his application.

The counsel to the respondent submitted that he had no objection to the application adding that, that was why he did not file any counter affidavit.

We held that since the application was not objected to by the respondent's Counsel coupled with the fact that we saw the Exhibits as germane to the pending appeal, we concluded to allow the motion.

The motion is therefore allowed as prayed. The applicant is however ordered to re-arrange and re-organize all the necessary processes to allow us hear the main appeal in earnest within two weeks.

Appeal succeeds.

SGD	SGD	SGD
S. M. ABDULBAKI	**S. O. MUHAMMAD**	**A. A. IDRIS**
HON. KADI.	**HON. KADI.**	**HON. KADI.**
07- 02-2011	**07- 02-2011**	**07- 02-2011**

(5) - 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, 1OTH FEBRUARY 2011

BEFORE THEIR LORDSHIPS:

I.A. HAROON - HON. GRAND KADI
A.A. IDRIS - HON. KADI
A.A. OWOLABI - HON. KADI

1- APPEAL NO: KWS/SCA/CV/AP/IL/13/2009

CROSS APPEAL NO: KWS/SCA/CV/AP/IL/17/2009

BETWEEN:

1. ALHAJA SALIMATA YUSUF
2. HAMMED KADIR
3. AMINATU SA'ID
4. ISIAKA KADIR - APPELLANTS/CROSS-RESPONDENTS
5. MURTALA KADIR
6. SHITTU KADIR
7. MASHUD KADIR.

AND

1. ALHAJI ABDULKADIR YUSUF
2. ABUBAKAR ABDULKADIR - RESPONDENTS/CROSS-APPELLANTS.

principle:

The couple of voidable marriage shall inherit one another where death occurs before their marriage is terminated (on account of being voidable).

STATUES/BOOKS REFERRED TO:

1. Taqribul – Maaniy P. 170
2. Fiqhu Sunnah Vol III P.262
3. Q 23: 4
4. Al-Qawaninu Al-Fiqhiyyah (Connon of Jurisprudence) P. 212 by Imam Mohammed bn Ahmad bn. Juzri al-karibi.
5. Bidayat al- Mujtahid wa Nihayat al-Muqtasid by ibn Rushd al-Andalusiyy Vol. 11 P 7.
6. Al-Fawakihu Ad-Dawaniy commentary on Risalah of Abdullahi al-Qairawaniy Vol. 11 P. 301.
7. Bidayat Al-Mujtahid Wa-Nihayat al-Muqtasid by Imam al-Qadi AbdulWalid Muhammed al-Audalusiy Vol. 2 PP 12 -13.
8. At-fiqh Al-Wadih Vol. 2 PP 30-33.

JUDGEMENT WRITTEN AND DELIVERED BY: I.A. HAROON

The respondents in this appeal, Alhaji AbdulKadir Yusuf and Abubakar AbdulKadir were the plaintiffs at the trial Upper Area Court. The 1st respondent instituted a court action against the appellants; Alhaja Salamata Hamed, Aminat Isiaka and three others to move the court to distribute the estate of late Alhaja Ayisatu AbdulKadir, the late wife of the 1st respondent among heirs; himself and his son from the deceased.

He listed the properties left behind by the late Ayisatu as follows:

1. *A storey building consisting of 20 rooms at ground floor and 10-rooms up-stairs.*
2. *A storey building consisting of four flats.*

3. *Two plots of land with an uncompleted 3-bedroom flat at Olufadi Area.*
4. *Three-bedroom flat (at decking stage) at Oja-iya Area.*
5. *A building of bedrooms at Otte.*
6. *Two plots of land at Kajola near Otte.*
7. *Two plots of land at Jimba-Oja along Amoyo.*
8. *Uncompleted 6-rooms building at Amoyo.*
9. *Two plots of land at Zango Area.*
10. *A plot of land near Muhyideen College of Arabic and Islamic Studies, Zango Area.*
11. *One Toyota Tanker and one empty tank.*
12. *A Toyota Engine and one generating plant.*
13. *A Bank Account with Trade Bank, Oja-Oba, Ilorin (no specified amount of money).*

The 1st respondent stated at the floor of the trial Upper Area Court that the estate in question had been distributed on two different occasions. The first was by some group of people, (*see p.5, LL14&15 of the trial court record of proceedings*), while the second distribution was carried out by the Sulhu Committee of the Jama'at Nasrul Islam. He further told the court that the Sulhu Committee directed them to take the document which consists the distribution of the estate to the Sharia Court of Appeal but the first respondent refused to comply with this directive.

In his conclusion, he told the court that the first appellant was the one controlling the estate in question including all the rents being generated. He therefore prayed the court to share the estate among himself, his son; Abubakar AbdulKadir and the appellants according to the sharia.

The claim of the plaintiff/1st respondent was countered by the first appellant who said that all other defendants/appellants are her brothers and sister from the same parents and that late Alhaja Ayisatu Ajike was their mother. That she only knew the plaintiff as a spiritual consultant to their late mother and that the 1st respondent is not related to them but wanted to share in the estate of their late mother; Alhaja Ayisatu Ajike. She said that the respondent was never a husband to their late mother. However, she agreed that her late mother had a son for the respondent (*see p.22, LL12-20 of the record of trial Upper Area Court proceedings*).

The 1st respondent called three male witnesses to prove his case while the appellants called 3 male witnesses as well to establish their case.

The trial court having heard the matter before it, paid a visit to the *locus* and ascertained the properties listed as the estate left behind by the deceased. Based on the statements of the appellants the trial court concluded that the estate of the deceased that were due for distribution are as follow:

1. *The storey building at Ipata Market Area, Ilorin valued @ #2,500,000.00*
2. *A flat building at Oja-Iya Area, Ilorin valued @ #450,000.00*
3. *A block of four flats storey building of 3-bedrooms at Odota Area, Ilorin valued @ #6,000,000.00*

The total value of the estate of the deceased; Alhaja Ayisatu Ajike was thus put at #8,950,000.00.

The trial Upper Area Court thereafter held that there was a valid marriage contract between the 1st respondent and the deceased; Alhaja Ayisatu Ajike based on the weight of evidence adduced by the 1st respondent. The trial court went further to share the property of the deceased among the heirs i.e. the mother of the deceased

appellants and the respondents by allotting a portion to the 1st respondent as the husband at ratio 1/4, ratio 1/6 to the mother and the remaining balance to be shared amongst sons and daughters of the deceased at ratio 2:1.

The appellants were aggrieved by this decision of the trial Upper Area court and therefore appealed to our court to seek for redress by Notice of Appeal filed and dated 21st July 2009.

On Thursday, 16th day of December 2010 when the appeal came up for hearing, the appellants' learned counsel, Dr. I.A. Abikan introduced the appeal and gave the names of the seven appellants as:

1. *Alhaja Salimata Yusuf*
2. *Hammed Kadir*
3. *Aminatu Sa'id*
4. *Isiaka Kadir*
5. *Murtala Kadir*
6. *Shittu Kadir*
7. *Mashud Kadir*.

All the appellants were present save Aminat Sa'id and Isiaka Kadir. The 1st respondent, Alhaji AbdulKadir Yusuf was also present with his learned counsel Yusuf F. Zubair, Esq. who appeared with his learned friend S.T. AbdulWahab (Mrs.) Esq.

The appellants' counsel addressing the court submitted that this appeal was dated and filed on 21st July 2009. It was an appeal against the decision of the Upper Area Court 2, Oloje, Ilorin, delivered on 24th June 2009. That the appeal is rested upon 2 grounds of appeal as follows:-

i. *That the decision of the trial court is unreasonable, unwarranted and cannot be supported having regard to the weight of evidence adduced before it.*
ii. *That the trial court erred in law when it held as follows "in view of the foregoing, I cannot but hold that the plaintiff has proved that a valid marriage was contracted between the plaintiff and late Alhaja Aishatu".*

The learned counsel to the appellants commenced his argument with the second ground because the first ground was an omnibus. He therefore formulated two issues from ground 2 for the determination of the appeal.

i. *Whether the trial court could rightly hold that there was a valid marriage in the absence of waliyy?*
ii. *Whether the court could go ahead to allot shares to the respondent in the estate of the deceased without a valid marriage?*

Arguing his case, the learned counsel submitted that it is trite for any court to decide matters before it on the basis of points of law and facts. That where there are no points of law raised in the issues then the case will be decided based on facts alone. He therefore canvassed that in any marriage it is a matter of law that there must be a *waliyy* (marriage guardian). He called our attention to the hadith of the prophet (SAW) which says:

There shall be no valid marriage without marriage guardian, dower and two upright witnesses	لانـكاح إلاّ بـولي وصـداق وشـاهـدين عـادلـيـن.

He further submitted that all the statements of the 1st respondent and his witnesses at the trial Upper Area Court could not establish that there was a *waliyy* in support of the purported

marriage between the deceased; Alhaja Ayisatu and the 1st respondent. That if there was any marriage at all, it will not be recognized in the absence of a legally represented *waliyy* (*references were made to pp.8, 10, 13, 14, 16, 17 &19-20 of the trial court record of proceedings*). He submitted that based on the above references it was subjective before the trial court that the validity of the marriage in question had been adequately challenged. The learned counsel to the appellants also referred us to *p.34, LL14-17* where one Alhaji Busari Oloruntele (DWI) said he was an uncle to the deceased and that he was the only living *waliyy*, that if there could be any marriage between the deceased during her lifetime and after the demise of her husband; Alhaji Omosidi, that marriage will not be contracted without his approval because according to him, he was the *waliyy.*

The counsel lamented that where the 1st respondent claimed that he conducted the *nikah* was not the birth place of the deceased. That all the witnesses called by the appellants testified to the fact that people at that place were neither related to them nor to the deceased. He then prayed us to hold that the trial court erred in law when it held that there was a valid marriage between the respondent and the deceased.

On whether there could be a share allotted to the respondent in the estate of the deceased, the learned counsel submitted that the trial court had placed her position on a defective marriage of which it has no right to do. According to him, it was an award rested on illegality. He finally prayed us to hold that there was no valid marriage to justify the 1st respondent's entitlement in the estate of the deceased. He urged that the decision of the trial court be set aside on this ground.

The learned counsel to the appellants formulated one issue to determine the second ground thus:

i. *Whether the statements made by the respondent can stand as evidence and whether the evidence of PW2 & PW3 can sufficiently corroborate the respondents' statement.*

He argued that the statements of the 1st respondent cannot stand as evidence in his own case. He quoted the hadith of the prophet which reads thus:

The onus of proof is on he who asserts البيّنة على المدعي

He submitted that the claim of the 1st respondent at the trial court that he married the deceased from one Sulaiman Muhammad; the late Daudu Ajasa was denied by the relatives of the deceased including her uncle; Alhaji Busari Oloruntele (DWI). He said that the father of Aishat Ajike, the deceased was Sanusi Akande a native of Amoyo. The learned counsel further submitted that PW2 and PW3 were *murid*, trainees of Tijaniyyah under the 1st respondent and therefore their evidence cannot corroborate the statement of the 1st respondent because both of them were interested parties. He pointed out the contradictions in the evidence of PW2 and the statements of the 1st respondent on p.4 of the record of proceeding of the trial court, that while the 1st respondent claimed that the marriage between him and the deceased was contracted at Isale Ajasa, the PW2 said it was contracted at Alapata. This fact was also maintained by PW3 (*see p.15, LL15*).

The learned counsel submitted that in a situation such as this, somebody must be telling lie. This according to him should have raised doubt in the mind of the court. He therefore concluded that there was no marriage at all between the 1st respondent and the

deceased and if there was, it was a secret marriage. He finally urged us to base our decision on the totality of all the above and to set aside the decision of the trial court and to dismiss the appeal.

RESPONDENTS' COUNSEL

The learned counsel to the respondents in his reaction to the submissions of the learned counsel to the appellants raised 3 issues for the determination of the appeal:

1. *Whether there was a valid marriage between the 1st respondent and the appellant's late mother, Late Alhaja Aishat Ajike.*
2. *Whether the 1st respondent satisfied the burden of proof placed on him on the existence of marriage between him and the late mother of the appellants.*
3. *Whether the 1st respondent is not entitled to share from the estate of the deceased having survived her as husband.*

On issue 1, the learned counsel submitted that the 1st respondent stated at the trial court that there was a marriage between him and the deceased, mother of the appellants. That the 1st respondent called 2 male witnesses (PW2 & PW3) who testified to the solemnization of marriage between him and the deceased. That the evidence of the independent witness corroborated their evidence that *nikah* was contracted between the 1st respondent and the deceased (*pp.5, 8, 14, 17 & 18 of the record of the trial court proceedings*). He then submitted that the 1st respondent had discharged the burden of proof placed on him. He referred us to *Maliki Law* by *F.H. Ruxton at p.29, par.15, sub.2*. He prayed us to sustain the decision of the trial court on this regard by affirming that there was an existing marriage between the 1st respondent and the deceased.

On issue 2, the learned counsel to the respondents submitted that his client i.e. the 1st respondent had discharged the burden of proof placed on him by calling 2 male witnesses. He then submitted that what the law required was that the two witnesses must be male, adult, sane and Muslim. That once these qualities are possessed by the witnesses, the testimony will be valid and acceptable irrespective of whether they are relatives of the party asserting or denying. He said that the submission of the learned counsel to the appellants that PW2 and PW3 were trainees under the 1st respondent and therefore interested party cannot be supported by any law. He prayed us to discountenance with that submission.

He further submitted that the requirement of the law had been satisfied by the statement of the 1st respondent that he married the appellants' late mother from her father Mallam Sulaiman Muhamad (late Daudu of Isale Ajasa) and that the deceased bore him a male child; Abubakar AbdulKadir (*see p.2 & 4 of ROP*). That the statement of the 1st respondent was corroborated by the evidence of his two witnesses and the evidence adduced by the appellants particularly the DW2. He submitted, arguing without conceding that even if the 1st respondent failed to establish one of the essential provisions of *nikah* which is the *waliyy* having satisfied all other requirements, the appellants' mother did not require *waliyy* to contract the *nikah* because of her status been *ath-thayyib* (married/divorcee/widow) and not *bikr* (a virgin). He quoted the verse of Qur'an 23:4 in support of his argument and called our attention to the provision of law in *Bidayat al-Mujtahid wa Nihayat al-Muqtasid* by *Imam al-Qadi Abul Wahid Muhammad al-Andalusiyy, Vol.2, p.12-13*. He then prayed us to hold that the 1st respondent and the deceased were legally married.

On issue 3, the learned counsel submitted that since there was an established marriage between the 1st respondent and the

appellants' late mother, the 1st respondent is entitled to share from the estate of his late wife. He prayed us to so hold.

CROSS APPEAL:-

The Cross Appeal No. *KWS/SCA/CV/AP/IL/17/2009* was dated and filed on 6th November 2009 pursuant to the leave for an extension of time granted by this court in our ruling of 21st October 2009. It was consolidated with the main appeal. One Abubakar Abdulkadir Yusuf, son of Alhaji Abduulkadir Yusuf, the cross appellant was joined as 2nd cross appellant. By our leave which was granted through the oral application by the learned counsel to the cross appellant the hearing of the cross appeal would be heard together with the main appeal.

The learned counsel to the cross appellants in his submission gave three reasons for the cross appeal:

(i) That the properties left behind by the deceased Alhaja Aishat Ajike, should be distributed among the heirs (the two cross appellants inclusive) in accordance with the rules and tenets of Islamic Law.

(ii) That the cross appeal was against the decision of the trial court that only three list of properties of the deceased (i.e. properties at Ipata, Oja Iya & Odota) were the proved items.

(iii) That the cross respondents should account for the rents accrued from the properties of the deceased from the date of her death.

The learned counsel thereafter formulated 2 issues:

1. *Whether the trial court was right in pronouncing that the cross appellant had proved only (3) three items out of the properties tendered before it.*

On this issue, the learned counsel submitted that the 1st cross appellant had substantially proved the existence of all the properties enlisted before the trial court for distribution as that of his late wife (*see pp 4 & 5 ROP*). That this was testified to by the evidence of PWI, Alhaji Ibrahim Alabi Umar before the trial court where he tendered *2 Exhibits; P1 and P2*. He submitted that all the cross respondents according to the attached exhibits in reference participated in the ascertainment of the enlisted properties of the deceased. That the cross respondents only declined when they were informed that the 1st cross appellant was their late mother's husband and entitled therefore to inheritance (*see pp.9 & 10 ROP).* He said the 1st cross-respondents admitted that the properties at Odota, a plot of land at Kajola Otte and an uncompleted building at Oja-Iya are part of the estates of her late mother, that the 1st cross-respondents also admitted that her 3 male brothers went with the Sulhu Committee of the Jama'at Nasril Islam to ascertain the properties (*see p.25, ROP*). He stated that the 1st cross-appellants had succeeded in establishing the extent of the properties of Alhaja Aishatu Ajike based on the available evidence. He therefore urged us to hold thus.

Issue No. 2: the learned counsel formulated an issue thus:

2. *Whether the trial court was right by not calling on the cross respondents to account for the rents collected from the tenants in the estate of the deceased since her death in 1999.*

The learned counsel submitted that ascertaining the extent of the properties of a deceased Muslim requires certain considerations particularly the immovable such as the value of the properties at the time of death, this according to him include the structures on such landed properties. He argued that all the heirs of the deceased are entitled to share from the accrued rent payments from the said properties. He lamented why the trial court was silent over this issue

despite the prayer of the 1st cross appellant for the order of the court on the issue as reflected on p.5 of the record of proceedings. He prayed us to make an appropriate order to compel the 1st cross respondents to account for the rents collected so far from the tenants on the rented properties.

CROSS RESPONDENTS' COUNSEL:

In his reaction on point of law to the submission on the cross appeal the counsel to the cross respondents; Dr. I. A. Abikan Esq. urged us to hold that the arguments of the learned counsel to the cross appellants were misconstruction of the whole issues as the 1st cross-appellant was not able to prove the *waliyy* who constituted the marriage between him and the mother of the cross respondents throughout the proceedings at the trial court. That the whole submissions of the learned counsel to the cross appellants was based on assumption as the trial court also assumed without any proof that one Muhammad Sulaiman (late Daudu Ajasa) was the legal *waliyy*. That the issue of proof was very germane in a matter such as this particularly when t he cross respondents challenged same at the floor of the trial court.

He submitted that people who can serve as *waliyy* to a woman were enumerated in the book of law known as *al-Fiqh al-Wadih, vol.2, p. 30-33.* He also referred us to another source of law titled *Bidayat al-Mujatahid wa Niyat al-Muqtasid, vol.2, pp.12-13*. He submitted that the view that *ath-thayyib* otherwise known as married woman, divorcee or widow does not require a *waliyy* is a misconception, that both the verse and the cited authorities are treating the power of *ijbar*. He prayed us to discountenance with the arguments of the cross appellants and allow the appeal. He urged us to hold that the trial court has right to base its decision on the three (3) items of the deceased property as the only proved items and those confirmed by the cross respondents as the estate of their late mother.

He submitted that the trial court did not only rely on the statement of the 1st cross appellant and the attached exhibits but also moved to visit the *locus* with the heirs to ascertain the properties of their late mother (*see pp.50-52 and 62 of the trial court record*). He submitted that whatever that was not specified or made known by the 1st cross appellant cannot be awarded him by the court.

He concluded that the cross appeal lacks merit and should be dismissed in its entirety. The learned counsel to the cross appellants; Yusuf F. Zubair, Esq. in his reaction replied on point of law to the response of the submission of the learned counsel to the cross respondents that whatever that was not specific can be awarded as it is a trite in Islamic law that the judge can raise *suo motto* a right of a party, if it is in the interest of justice even if such was not demanded.

Having carefully perused the trial court record of proceedings together with the annexed exhibits and patiently listened to the submissions of the learned counsels to the appellants and the respondents in the main appeal, and also the cross appellants and cross respondents in the cross appeal respectively, it is our well considered opinion that the crux of the matter in this appeal rests on three (3) fundamental issues:

i. *Whether there was a valid marriage with an essential provision of waliyy between the 1st respondent/cross appellant and the late mother of the seven appellants.*

ii. *Whether the trial court has the right to allot a share to the 1st respondent/cross appellant in the estate of the deceased as the surviving husband.*

iii. *Whether the trial court's decision to base its judgment upon the three (3) items confirmed by the appellants against the thirteen (13) items enlisted by the 1st respondent/cross appellant as the property of the deceased was right.*

We shall attempt to examine each of these issues one after the other:

On the issue of marriage, it is crystal clear from the submissions of the learned counsels to both parties that the deceased, Alhaja Aishatu Ajike was a widow at the time the purported marriage was contracted. It was also established by the submissions of the parties that there was a close relationship between the 1st respondent/cross appellant and late Alhaja Aishatu Ajike, a relationship described by the respondents' counsel as secret marriage which resulted to the birth of one Abubakar AbdulKadir, the son of the 1st respondent/cross appellant who is also the 2nd respondent/cross appellant in the instant appeal. There was also a claim by the 1st respondent/cross appellant that he married the deceased from one Alhaji Sulaiman Muhammad (late Daudu Isale Ajasa) who, according to him served as the *waliyy*. However, this claim was countered by the 1st appellant who said her late mother was only related to the 1st respondent/cross appellant in the capacity of the latter as a spiritualist consultant. The fact remains that the mother of the appellants and the 1st respondent/cross appellant were once known to be couple. This fact would not be far-fetched if one considers the evidence of *PW2 and PW3*; particularly the position held on this matter by the Sulhu Committee of Jama'at Nasril Islam which was presided over by late Alhaji Ibrahim Umar Alabi Makana who served as an independent witness to corroborate the claim of the 1st respondent/cross-appellant.

In the light of the foregone, the trial court in our opinion was right to have held that there was a valid marriage between the respondent and the deceased having considered the weight of evidence of the two witnesses *PW2 and PW3*, which was corroborated by the evidence of *PW1*. This issue is therefore resolved in favour of the 1st respondent/cross-appellant.

We took judicial notice of the submission of the learned counsel to the appellants/cross-respondents that *PW2 and PW3* are *murids* (trainees) under the tutelage of the respondent as an Imam and also a *mukaddam*; and that the two witnesses were interested parties by virtue of their relationship with the 1st respondent/cross-appellant.

The evidence adduced by the appellants on the validity of the marriage between the 1st respondent and the appellant's mother was not helpful because they were not the claimant, *al-Mudda'i*. The onus of proof in Islamic law is placed on he who alleges and that is herein the 1st respondent.

The position of law regarding the witness of near relations and close associates is that *such evidence where bias, benefit or suspicion is manifest should be disqualified*. It is our considered view that these witnesses; PW2 and PW3 although are trainees under the respondent, cannot be expected to derive any benefit from being part of such marriage contract. It is normal in Islamic culture particularly in the custom of this locality that such categories of people do partake in such occasions. This view of ours is strengthened by the provisions of Islamic law in *Ihkam al-Ahkam 'ala Tuhfat al-Hukkam by Muhammad al-Andalusiy, p.28.* See also *Islamic Law: The Practice and Procedures in Nigerian Courts by Adamu Abubakar, Esq., pp. 168-169* and *Maliki Law by F.H. Ruxton, p.294* which provides thus:

It is for the kadi to judge whether the relationship is

too close for the evidence to be free from suspicion.

As regards the challenge of the learned counsel to the appellants on the issue of contradiction in the evidence of PW2 and the statement of the 1st respondent relating to the venue where the marriage was contracted. In our view this was immaterial to the main issue of *wilayat* (marriage guardianship) which in our opinion

could take effect at any place depending on the location of the personality involved.

This issue is therefore resolved in favour of the respondents/cross-appellants, particularly when there was no objection raised against those pieces of evidence at the floor of the trial court.

On whether the trial court has the right to allot a share to the 1st respondent/cross-appellant in the estate of the deceased as a surviving husband, it is our candid opinion that the 1st respondent/cross-appellant has legal right to share out of the properties of the deceased based on the issues highlighted above particularly when it had been established that there was a valid marriage between the respondent and the deceased even if it was a secret marriage using the language of the learned counsel.

On the same issue of right of inheritance on the part of the 1st respondent/cross-appellant, Islamic law in its golden rules went further to avail the couple of the marriage contracted in the absence of *waliyy*, or *nikahul fasid* (voidable marriage, such as secret marriage e.t.c), the right to inherit one another where any of the two couple dies before such *nikah* is dissolved or terminated**.**

This opinion is well stressed by the famous jurist *Imam Muhammad bn. Ahmad bn. Juzri al-Kalbi* in his work titled *al-Qawanin al-Fiqhiyyah (Canon of Jurisprudence), p.212*. The law reads thus:

The couple of voidable marriage shall inherit one another where the death occurs before their marriage is terminated (on account of being voidable).

والفاسد الذي يفسخ بالطلاق يتوارثان فيه إن مات أحدهما قبل الفسخ (القوانين الفقهيّة, ص 212)

See also**; *Bidayat al-Mujatahid wa Nihayat al-Muqtasid by Ibn. Rushd al-Andalusiyy, Vol. II, p.7***

It is narrated from him (Imam Malik) that he used to view inheritance among parties (husband and wife) married without a guardian (waliyy) as valid.

و روى عنه (أي الإمام مالك) أنه كان يرى الميراث بين الزوجين بغير ولي . (بداية المجتهد ونهاية المقتصد للإمام القاضى أبو الوليد أحمد بن رشد الأندلسي، ص7، ج 2).

See the same source in English version by Prof. Ahsan Khan Nyazee, p.9.

It is therefore our candid opinion in the light of the above that the 1st respondent/cross appellant in the instant appeal has the right to be allotted a share among other heirs from the leftover of his late wife, the deceased mother of the appellants/cross respondents, and we so hold.

On the last issue, which is the main issue in the cross appeal, we share the same position with the learned counsel to the appellants/ cross-respondents that a claim that was not specific or known cannot be awarded by the court. We therefore rely on our law as provided for in ***al-Fawakih ad-Dawaniy Commentary on Risalah of Abdullahi al-Qairawaniy, Vol. II, p. 301*:**

The procedure of filing a claim is that the judge orders the plaintiff to speak first. He then makes his claim precise and definite. If he fails to give the bases of his claim, the judge shall demand for them… it is when he lands that the judge asks the defendant to respond. If he admits what is alleged against him, the

صفة الدعوى أن يأمر القاضي بالكلام ابتدأ فيدعى بمعلوم محقق الأصل… ويبين سببه وإن غفل عن بيانه سأله الحاكم عنه… وبعد فراغ الدعوى يأمر القاضى المدعي عليه بالجواب فإن أقر

judge asks the present witnesses to testify to his admission and records the admission so that he will not be able to deny it. But if he denies the claim, the judge orders the plaintiff to produce evidence. If he does produce it, he listens to him; he them turn to the defendant if he has anything to puncture the evidence produced by the plaintiff.

بما ادعى به عليه فيأمر القاضى الشهود الحاضرين عنده بالشهادة عليه وكتابه الإقرار خوف جحده وإن أنكر أمر القاضي المدعي بإقامة البينة عليه فإن أقامها سمعها وأعذر للمدعي عليه فيها بأن يقول له هل عندك من يجرح تلك البيّنة .

In the light of the foregoing, the trial court is duty bound to refer to the exhibits tendered before it on this matter particularly the Report and Valuation on Properties of late Alhaja Aishatu marked *CVFM426/2003* and the Report of the Sulhu Committee of JNI on the Distribution of the Inheritance of Late Alhaja Aishat Ita Kure marked *CVFM426/2003 "Exhibit P1"*. This will serve as a guideline in order to arrive at a specific number and adequate knowledge of the properties of the deceased. The trial court is hereby ordered to retry this aspect of its judgment excluding the three (3) items that were already shared and distributed among the heirs of late Alhaja Aishatu Ajike. We order a retrial of this aspect of the judgment of the Upper Area Court in its decision of 25th June 2009 particularly on the list of the alleged remaining inheritable items following the above enumerated Islamic procedures. The trial court is also ordered to compel the appellants to account for the rents collected from the tenants in the estate of the deceased since the date of her death in 1999 which will form part of the estate to be shared among the heirs.

We affirmed the decision of the trial court that there was a marriage contract between the 1st respondent/cross appellant and the

late mother of the appellants/cross respondents, Alhaja Aishatu Ajike. We also held that the 1st respondent/cross-appellant is a legitimate heir as the only surviving husband of the deceased and upheld the decision of the trial court on the three items that were distributed among the heirs.

Appeal fails.

SGD	**SGD**	**SGD**
A.A. OWOLABI	**I.A. HAROON**	**A.A. IDRIS**
HON. KADI	**HON. GRAND KADI**	**HON. KADI**
10/02/2011	**10/02/2011**	**10/02/2011**

(6) 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 DAYOF FEBRUARY, 2011,

BEFORE THEIR LORDSHIPS:

I. A. HAROON	**-**	**HON. GRAND KADI**
M.O. ABDULKADRI	**-**	**HON. KADI**
A.A. OWOLABI	**-**	**HON. KADI**

APPEAL NO, KWS/SCA/CV/AP/IL/22/2010

BEETWEEN

MUNIRU KAYODE ELELU - APPELLANT

AN D

NIMOTALLAHI MUNIRU - RESPONDENT

STATUES/BOOKS REFERRED TO:

- Order IV R 3 (2) of SCA Rules cap 122 of Laws N/N 1963.
- Jawairul – Iklil Vol. I P. 332
- Fiqh – Sunnah Vol .3. P. 299
- Ashalul – Madarik Vol III p. 199 by Abubakar Hassan Al-Kasinawi
- Section 36 (1) of 1990 constitution.

JUDGEMENT: WRITTEN AND DELIVERED BY M.O.ABDULKADIR

On the 2nd July 2010, the plaintiff Respondent Nimotallahi Munir sued to seek dissolution of her marriage with Muniru kayode Elelu, the defendant/appellant at the Area Court 1 No3 sitting at Adewole Ilorin. in its suit No153/2010.At the trial court,

the Plaintiff /Respondent was represented by counsel Iliyasu Saka while the Defendant/Appellant was not represented at all.

On the day the case was fixed for hearing none of the parties was in court, but the Plaintiff / Respondent was represented by her counsel while the defendant/ appellant wrote a letter to the court dated 19/7/2010 stating two things therein as he quoted thus:

1. *I have no objection to whatsoever her request (sic).*
2. *I pray the court to order her to desist from bearing or using my name(s) as her surname or for whatever, from the date petition is granted (sic)*

The trial court made its findings and delivered its judgment on the 30th July 2010 dissolving the marriage on the basis of the letter of the Defendant/ Appellant, the trial judge also discountenance with the counter claim on the ground that the counter claimant has failed to prove his claim before the court, he relied on the prophetic hadith which says:

Proving of a claim is on the person who asserts it. البينة على المدعـي

The defendant/applicant had initially sought and obtained the leave of this court to extend time within which to file his appeal against the decision of the trial court, Thus our ruling on the motion **NO KWS/SCA/CV/M/17/18/2010** granted on 15/9/2010, a copy of this ruling was attached to the notice of appeal in compliance with **Order IV Rule 3 (2) of the Sharia Court of Appeal Rules Cap 122 of the Laws of Northern Nigeria 1963** as applicable to Kwara State.

Consequent upon this, he filed a notice of Appeal through his counsel Magaji Oba Abdulkadir on 29/11/10. The Notice of appeal contains 2 grounds, the two grounds of appeal are hereby

reproduced with the particular of error and the relief sought from the court

GROUNDS OF APPEAL

(i) The trial Judge erred in Law when he held that:

"And since the Defendant/ counter claimant has failed to prove his claim before the court in the absence of admission from the Plaintiff /Respondent, this court has no option than to discountenance with that counterclaim. Therefore, the court resolves the counter claim against the counter claimant" (sic).

(ii) The decision was against the weight of evidence (sic)

PARTICULARS OF ERROR

a. The letter written by appellant/ Defendant was admitted in evidence and marked exhibit PWI and thus formed part of the proceedings (sic)

b. The said exhibit PWI was acted upon by the trial Judge. (sic).

c. The Plaintiff/ Respondent did not contradict or controvert this Exhibit (sic)

d. The submission of the counsel does not amount to evidence (sic).

RELIEFS SOUGHT FROM THE COURT

To set aside the Judgment of the Lower court as per the counterclaim and enter Judgment for the Appellant as his counter claim (sic)

Arguing the appeal, Y.A. Babadudu the learned counsel for the Defendant/Appellant submitted that they are formulating an issue and the issue is whether the lower court was right when it acted on the Exhibit before the court i.e. the letter written by the appellant counter claimant in giving Judgment in favonr of the plaintiff/Respondent while refusing the Defendant / Appellant counter claim : he submitted further that it is trite under Islamic Law to admit a documentary evidence, the counsel referred to page 5 paragraph 3 of the record of proceeding in which the court relied upon to grant the request of the Plaintiff/ Respondent and refusing the counterclaim of the Defendant/Appellant. The counsel submitted that in every giving Judgment of court, a court must base its Judgment on the weight of evidence before it. However in Exhibit P1, the trial court ought to have acted on the whole contents of the exhibit and not to act on the part ; the counsel refered to page 2 lines 14 of the record of proceedings, the counsel went on to submit that what connected the two parties together is marriage and since the marriage has been dissolved there is no justification for the respondent to continue using the appellant name; the counsel went on to submit that the trial court solely relied on the submission of the respondent counsel which was not amount to evidence before the trial court , the appellant counsel finally urged the court to set aside the part of the Judgment they are appealing against.

Arguing against the grounds of appeal filed by the appellant counsel, the respondent counsel Iliyasu Saka Esq. adopted the issue raised by the appellant counsel regarding his submission on the admissibility of exhibit P1 by the trial judge. Also, he raised another issue which is to the effect that whether the court can grant the appellant's claim without proof.

On the admission of Exhibit P1, the respondent counsel submitted that the trial judge has acted rightly and in consonance

with the principle of Islamic Law which stipulates that: البينة على المدعي "the burden of proof is on the person who asserts" the counsel submitted further that it was on the basis of the above authority that the trial judge granted the prayer of the respondent for divorce, and having admitted by the appellant herein, the counsel also said that by the same token and by the prophetic tradition cited (SUPRA). The trial judge discountenance with the Defendant /Appellant counter claim for want of proof, he referred to the case of Alhaji Abdullahi Olusola VS Salimatu Jimoh (2006) SCA AR page 117 at 119 APP NO KWS/SCA/CV/AP/IL/08/2005 to the effect that Islamic Law Court would not work on an unsubstantiated claim, and based on this authority he submitted that the part of the decision being complained against by the appellant herein is liable to dismissal and urged us to so hold. The respondent counsel also submitted that the counter claim of the appellant only amount to mere statement of claim and to push on the said claim, Islamic Law stipulates the required number of witnesses, the counsel referred to the case of Maina Ahmadu VS Ahmadu Mayaki Yunusa (1998) SCA ALR page 72 at p. 72&75 appeal case number KWS/SCA/CV/AP/LF/01/98 where it was held that failure to support a claim with the stipulated number and gender of witnesses render it liable to termination.

Finally, the respondent counsel urged this court to hold that the counter claim was rightly discountenanced with and prayed the court to resolve the issue in favour of the respondent.

We have carefully read through the record of proceeding of the trial court, we also listened attentively to the submission of both counsel on each side, and on that basis we have deduced the following issues for our determination.

i. The issue of Khul'u divorce or separation as it relates to this appeal.

ii. The issue of counter claim of the Defendant/Appellant who prayed the trial court to order the Plaintiff/ Respondent to desist from bearing or using his name.

iii. The issue of admissibility of Exhibit P1 in evidence by the trial

Court and its reliance on it to arrive at the judgment of the matter.

We shall treat the 3 issues one by one.

Issue one: Although the appellant in this appeal is not contesting the decision of Lower Court on divorce, but since the whole proceedings emanated from divorce khul'u **"Divorce by way of mutual release"** we should not close our eyes on the position of Islamic Law regarding the subject matter of the case, and as to whether the step taken by the trial judge was proper or not.

The trial court while acting on the response of the Defendant/Appellant's letter that contains in Exhibit P1 stating thus:-

"I have no objection to whatsoever her requests (sic)"

We hold as proper the position taken by the honourable trial judge when he proceeded to grant the prayer of the Plaintiff/Respondent for divorce khul'u which becomes binding on both sides immediately even without determining and settling the issue of compensation before it was granted. The position of Islamic Law is that whether or not the compensation is paid by the Mukhalla" (The wife seeking Khul'u) once the offer is accepted by the husband the khul'u takes effect see ***Jawahirul Iklil vol. 1 p 332*** it states that:

The dissolution of marriage by **وبانت من خالعت زوجها بعوض, بل**

way of Khul'u becomes binding the moment it is sought (by the wife) and accepted/pronounced upon by the husband with or without payment of compensation.

" ولو بلا عوض حيث نص عليه.. (راجع جواهر الإكليل، جزء 1 صفحة 332)

See also **AWAWU MOHAMMED VS. MOHAMMAD IBRAHIM, Annual Report of Sharia Court of Appeal 2005 Pg 340**. It is therefore our considered view that since this issue of Khul'u has been decided by the trial court having terminated the marriage between the two parties, relying on offer by the Plaintiff/Respondent and acceptance by the Defendant/Appellant through his letter to the court Exhibit P1, the Khul'u is therefore binding on the 2 parties we in effect leave this issue as it had been and we so hold.

2. The issue of counter claim of Defendants/Appellant who prayed the trial court to order the plaintiff/respondent to desist from bearing or using his name. The issue of counter claim of the Defendant/Appellant as a result of his response to the prayer of the plaintiff/respondent for divorce whereby he wrote a letter dated 19/7/2010 wherein he stated as follows:

1. I have no objection to whatsoever her request (sic).
2. I pray to the court to order her to desist from bearing or using my name(s) as her surname or whatever, from the date the petition is granted (sic) **(see page 3 of the record of proceeding of the trial court).**

On the application of the plaintiff/respondent counsel at the lower court, the letter was admitted in evidence and marked exhibit

P1. By this singular act of the Defendant/Respondent he has put his claim before the trial court and against the plaintiff/respondent and by virtue of that, he is before the court a complainant ***al-muda'iy*** المدعى and under Islamic Law being a complainant, he is entitled to the patience and audience of the court till he lands in putting his complaints before the court, it is therefore our candid view that the trial court should have not discountenanced with the counter claim of the Defendant/Appellant, he should have hesitated before he jumped in to that conclusion more especially when he himself has conceded to the prophetic tradition cited by the plaintiff/counsel which says: **البينة على المدعي "*the burden of proof is on the person who asserts".*** The trial court should have called upon the defendant/appellant to come and prove the alleged bearing or using his name as her surname. See this court's judgment in **Adamo Bayo vs. Sumonu Jimoh appeal case No KWS/SCA/CV/AP/IL/O4/95 delivered on 10/7/95** contained in the **Sharia Court of Appeal Annual Report 1995 Page 117 at Page 119.**

We also want to reiterate that throughout the course of the proceeding before the trial court the Defendant/Appellant was not given any opportunity to prove his counter-claim so the trial court cannot claim that the Defendant has failed to prove his case before the court. This is also against the golden rule laid down by Islamic Law clearly stated by Caliph Umar in his letter to Abu Musa Al-Ashari which is also the judges' code of conduct.

Set time for a claimant who asserts that the right or proof is not at his disposal to produce it. (Fiqh as-Sunnah, Vol. 3, p.229.	**واجعل لمن ادعى حقاً غائباً أو بينة أمد ينتهي إليه (راجع فقه السنة، ج 3، ص 229) .**

See also the book of **Ashal al–Madarik by Abubakar Hasan Al–Kasinawi**, **Vol**. **III Page 199** said:

A judge does not make a pronouncement until he hears the statement of claim and evidence filling from the plaintiff. He then asks the defendant if he has a defence to put up.

ولايحكم حتى يسمع تمام الدعوى ويسأل المدعى هل لك مدفع (راجع أسهل المدارك، ج 3، ص 199).

It is also against the right to fair hearing as enshrined in **section 36 (1) of the constitution of the Federal Republic of Nigeria 1999**. In the case of **Unibiz (Nig) Ltd vs. CBCL (2001) 7 NWLR**, it was held that:

> ***if this right to fair hearing must be seen to be a real right, it must carry along with the right in every party to a litigation in the court of Law to be heard before a final order which will be binding on him if made.***

We therefore opined that it is sacred duty of a judge to demand for the proof of counter claim by the appellant, the hasting to take decision as he embarked upon by the trial court without having regards to the laid down provisions of Islamic Law in a case of this nature will amount to injustice. We further hold that, the learned trial judge was wrong in his decision to discountenance with the counter claim of the Defendant/Applicant.

In conclusion, we allow the appeal and set aside the decision of the trial court in suit No.153/2010 as relates to the part of the judgment appealed against. Consequently, we order a retrial before

the same trial court and order the trial judge to follow normal Islamic procedure law as pointed out in the above cited authorities.

Appeal allowed.

SGD	SGD	SGD
A.A. OWOLABI	**I.A. HAROON**	**M.O. ABDULKADIR**
HON. KADI	*HON. GRAND KADI*	*HON. KADI*
24/02/2011	*24/02/2011*	*24/02/2011*

(7) IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIA
IN THE SHARIA COURT OF APPEAL OF SHARE JUDICIAL DIVISION
HOLDEN AT SHARE ON TUESDAY 8TH DAY OF MARCH, 2011

BEFORE THEIR LORDSHIPS:-

S.O. MUHAMMAD - HON. KADI.
S.M. ABDULBAKI - HON. KADI.
M.O. ABDULKADIR - HON. KADI.

APPEAL NO. KWS/SCA/CV/AP/SH/01/2010.

SIDIKAT ABDULMUMEEN - APPELLANT

VS.

ABDULMUMEEN IDRIS - RESPONDENT

principles:

1. It separation occurs between the parents of a child through divorce or death, the most appropriate right person to take over the custody is the mother if she has not remarried.
2. And she (i.e the mother) has right of custody over her child more than anybody else of she has not remarried.
3. The right person to it (i.e to custody of a child) is his mother.
4. The father should maintain his child till (he) attains age of maturity and capable of earning a living.

STATUES/BOOKS REFERRED TO:

1. Min – Hajul – Muslim p 589 by Abubakar Jabir Al-Jasairi.
2. Kitabul – Fiqh ‘Alal – Masaibi Arba’a Vol. IV P. 595 by AbdulRahman Al- Jazaery

3. Ashalul – Madarik Vol II PP. 204 & 206 by Abubakar Hassan Al-Kashnawi
4. Siraju – Salik Vol. II P112
5. Kitabut – Fiqh Ala Moshoti Arba'a Vol. Iv P. 513.
6. Al-Mudawana Al-Kubura vol. 11 p. 247 –Al – Imam Bn Annas Al-Asbani
7. Q 65.7

JUDGEMENT: WRITTEN AND DELIVERED BY S.O. MUHAMMAD

AbdulMumeen Idris, the respondent, sued Sidikat AbdulMumeen, the appellant, at the Grade I Area Court, Share, seeking the court assistance to take custody of his child, who was about 8years old. The appellant told the court: "I am not ready to release the custody of the said child." She instead made a counter claim saying: "…..the plaintiff is not responsible and had not been providing maintenance to the child for a very long period of time now." (See p.1 of the record of proceedings). The respondent, however, denied this counter claim saying: "There was a time she felt sick, I paid her school fees and provide cloth and food to the child (sic)" He even showed the court the receipts of the school fees paid, the laboratory report of the medical examination carried out on the child and her birth certificate.

However, the appellant reacted sharply and here is what she told the trial Area Court:

> …..the plaintiff went and removed all these receipt from the bag which I kept them. Immediately I got home to pick them, my daughter told me that the plaintiff had come to remove them. I was the person that paid all

those school fees and obtained receipt. I still maintain I am not prepared to release the custody (sic)

At this juncture, the trial Area Court judge reviewed the claims of custody only in favour of the defendant/respondent

Inspite of her success the defendant/appellant felt dissatisfied with the decision of the trial Area Court and therefore filed this instant appeal with the following grounds:

1. That decision of Trial Area Court I Share unreasonable, unwarranted and cannot be supported due to the weight of evidence adduced before it (sic)
2. That Trial Area Court awarded custody of my child to me but silent on the issue of maintenance.
3. That more grounds of Appeals may be file later (sic).

The appeal was heard at Share on 22/12/2010 with both parties in attendance representing themselves. The appellant told us that the respondent was not ready for maintenance of her children, Zainab (8years 7months) and Rafia (11months) born after the court action. She concluded by urging us to order the respondent to maintain her two children on continual basis.

In his response, the respondent conceded to the fact that he was the father of the two children and also agreed that he was the one who sued the appellant at the trial Area Court to claim custody of the first child, Zainab. Rafia was not in existence then. He added that he took the stand not to maintain the child again because, according to him, the appellant insulted him and embarrassed his person when she told the trial Area Court that he was not responsible and that he stole receipts from her bag.

When the appellant was given her second chance, she simply repeated her request to the effect that the respondent should be ordered to maintain his two children with her.

On our part, we read through the 4-page record of proceedings and took judicious and judicial notice of the following issues for our determination.

1. The issue of divorce, separation or, release, ***Khul'*** as it affects this appeal.
2. The issue of claim of custody of Zainab by the respondent at the trial Area Court.
3. The issue of counter claim for maintenance of Zainab raised by the appellant at the trial Area Court. The issue of which formed part of the record of proceedings before us.
4. Whether or not the respondent was right to maintain his stand not to maintain his first child because of the insult and embarrassment suffered from the utterances of the appellant at the trial Area Court.
5. The issue of the second child, Rafia who was said to be eleven months old by the date we heard the appeal but which was not an issue at the trial Area Court.

We intend to address these five issues one after the other.

On issue (1) we noticed that no issue of divorce, separation or release, ***khul'*** was raised at all by both parties at the trial Area Court and we presumed that the issue should have been resolved one way or the other by both parties before taking the claim of custody to the trial Area Court. Therefore, we resolved that we had no business raising this issue at this appellate stage. So we decided to leave this issue as it had been. And we so hold.

On issue (2), we agree with the trial Area Court that in a situation of divorce or separation between husband and wife "….the first to be considered as best custodian of a child is the mother…." (See page 3 of the record of proceedings). We only want to add that so long the mother has not remarried. This is the position of the Islamic Law. For instance, at p.589 of ***Minhajul Muslim*** by Abubakar Jabir Al-Jazairi it is provided as follows:

If separation occurs between the parents of a child through divorce or death, the most appropriate right person to take over the custody is the mother if she has not remarried….

إذا حصلت الفرقة بين أبوي الطفل بطلاق أو وفاة كان الأحق بحضانته أمه ما لم تتزوج ... (راجع: منهاج المسلم لأبي بكر جابر الجزائرى , صفحة 589)

This same provision is contained at pages 204 and 206 of ***Ashalul Madarik*** Vol.II by Abubakar Hassan Al-Kashnawi. It reads as follows:

And she (i.e. the mother) has right of custody over her child more than anybody else if she has not remarried…..

وهي أحق بحضانته ما لم تنكح....

(راجع: أسهل المدارك لأبي بكر حسن الكشناوى ج ٢ ص ٢٠٤ - ٢٠٦)

Volume IV, page 595 of ***Kitabul Fiqhi 'Alal – Madhahibil Arba'*** by AbdulRahman Al-Juzaery also provides as follows:

The right person to it (i.e. to custody of a child) is his mother.

فأحق الناس به أمه.

(راجع: كتاب الفقه على المذاهب الأربعة ج ٤ ص ٥٩٥)

Throughout the record of proceedings we could not see any reference to the fact, or otherwise, that the appellant has remarried.

Therefore and in view of the fore gone, we affirm the decision of the trial Area Court which awarded custody of Zainab to her mother. The respondent had to fail in his bid to claim custody of his child from the appellant at the trial Area Court. And so, be it.

On issue (3), the appellant made a counterclaim as referred to ***supra*** when she told the trial Area Court that the respondent had not been providing anything to maintain the child but this counter claim was dismissed by the judge who considered the counterclaim in his judgment at page 3 of the record of proceedings as a ploy by the appellant to refuse the respondent his claim. The judge said:

> *From the look of things, this court is of the view that the cause of action in this claim of custody and* ***not claiming of maintenance*** *and therefore, the defendant should not use the non-providence of maintenance by the plaintiff as parameter or yardstick to refuse the plaintiff…. (sic)*

We candidly disagree with this stand of the trial Area Court. Instead, we are of the strong opinion that this counter claim should have been attended to as well because it was and still is a ***da'awah*** arising from response to a **da'awah**. It must therefore be understood that each party should be treated as a plaintiff in respect of his or her claim or/and counter-claim.

Under Islamic Law both parties are considered as ***Mutadaayia'en,*** double plaintiffs or claimant and counter claimant. The Islamic Law procedure then requires that both parties should be given the opportunity of knowing the claim of the other and also afforded the opportunity of producing witnesses to prove the claim or the counter-claim as the case may be. See this court's judgment in our 1995 Annual Report p.141 at p.147 in Alhaji Saka and

Mariamo Omo Busari Vs. Alhaji Issa Agaka in Appeal No. KWS/SCA/CV/AP/IL/08/95 delivered on 1st September, 1995.

The trial Area Court Judge did not apply this procedure in the instant appeal before us by refusing to attend to the counter-claim of the appellant. This is wrong and we so hold. Where there are two claims pending in the trial court, the initial suit and the subsequent one, raised independently or as part of defence of adverse party – a case of claim and counter claim has arisen. In this vein, a counter claim should be regarded and treated for all intents and purposes and in the cause of justice and as an independent action in its own right. Indeed, it is more of a sword for attack than a shield for defence. Treated as such is both logical and legal. In essence, both the claim and counter claim are to be tried together for convenience and as a cost and time saving measures. The independent nature of counter claim is buttressed by the point that it needs not relate to or in any way connected/or linked to the claim of the plaintiff. Thus, it need not necessarily be of the same nature or arise from the original/substantive claim. Indeed, the defendant with a counter claim becomes or assumes the position of the plaintiff and the plaintiff in the original action/suit transforms into the defendant in respect of the counter claim. Put differently both parties swarp their respective position. Invariably, the same rules of procedure, standard and burden of proof will apply to both the claim and the counter claim. There must be satisfactory proof of either. Hence at the end of the day, both suits may each partly succeed or fail or one may succeed while the other may fail. Each case will stand or fall on its respective particular facts and given circumstances. Thus the fate or the outcome of a counter claim is not predicated upon the outcome of the plaintiff's claim see generally the decided cases of ***Garba Vs. KUR*** (2003) 11 NWLR (Part 831) p.280; ***Usman Vs. Garke*** (2003)14 NWLR (Part 840) 261; ***Musa Vs. Yusuf*** (2006) 6 NWLR (Part 977) 454.

On issue (4) the respondent was not right to refuse to provide maintenance for his child under the custody of the appellant simply because the appellant insulted or abused him; or because she exhibited any kind of disrespect to his person. We condemn the action of the appellant in this regard in its entirety as uncalled for and as irrational. However, the issue of maintenance is divine and it is the responsibility of the father to maintain his child or children. This is the position of the Islamic Law in clear terms. In **Sirajus – Salik,** Vol.II at page 112 it is provided that:

The father should maintain his child till (he) attains the age of majority and capable to earn a living

وينفق الأب على الابن إلى # بلوغه حرًا بكسب عاقلا

(راجع: سراج السالك ج ٢ ص ١١٢)

Similarly, AbdulRahman Al-Juzayry in his book, ***Kitabul Fiqhi 'Alal Madhahibil 'Arba'*** Vol. IV at page 513 provides that:

It is mandatory on the father to maintain his children…..

" يجب على الأب نفقة أولاده.....

Furthermore, in **Al-Mudawwana Al-Kubrah** Vol.II at page 247, the author, Al-Imam Bn Anas Al-Asbahi considers this responsibility mandatory when he says:

In all circumstances, his (i.e. the child's) maintenance is mandatory on the father if the child has not attained the age of puberty….

على كلّ حال على الأب نفقته ما لم يحتلم....."

(راجع: المدونة الكبرى ج ٢ ص ٢٤٧)

In view of all these plethora of authorities, the respondent has no option other than to maintain and to continue to maintain Zainab as stipulated by the law. And we so hold.

On issue (5) - the last issue – we hold that the authorities quoted above need be and it is hereby applied to the maintenance of

Rafia, the second child, although her own case was not an issue at the trial Area Court. We decided to invoke 0.3 R.7 (2) (g) of the Sharia Court of Appeal Rules, in this regard. The Rule provides:

> 7(2) *……the Court may re-hear or re-try the case in whole or in part and may –*
>
> *7 (2) (g) do or order to be done anything which the court below has power to do or order;….*

It is in view of this that we hereby order the respondent to also provide maintenance for the second child, Rafia, moreso when he did not deny the paternity of the child.

Meanwhile, we again invoked the same 0.3 R.7 (2) (g) to enquire from the respondent his source of income. In otherwords, his job, his means of livelihood. This was to enable us determine the quantum of maintenance to be provided for the two children – Zainab (8years +) and Rafia (11 months old). In his reply on 18th January, 2011 when we sat again on this appeal, he told us that he was a civil servant at Works Department under Estate Unit at the Headquarters of Ifelodun Local Government. According to him, he was a Level 09 Officer with gross salary of a little over ₦22,000.00k. He added that he serviced loan at the Guarantee Trust Bank (GTB) to the tune of ₦13,500.00k and another loan at the cooperative society at his work place to the tune of N4,000.00k. Therefore after all these deductions, his net or take home pay was only ₦4,500.00k. He therefore offered ₦2,000.00k only monthly for maintenance of the two children and urged us to order the appellant to let him have access to his children which he had hitherto been denied for long.

The appellant, in her reply, stated that to the best of her knowledge, the respondent was on Level 10 and also claimed that she was not aware that he (the respondent) was servicing any loan.

She therefore demanded N20,000.00k monthly to maintain the two children under her custody.

On the claim of the respondent that the appellant had been denying him access to these children, the appellant accepted the claim on the ground that she could not understand her offence which resulted in the respondent "sending" her out of his house.

On our part again, we decided to ascertain the exact salary grade level of the respondent and all the other details to enable us arrive at a fair and just decision on the quantum of maintenance allowance due monthly for the two children.

To this effect, we directed our Registry to ascertain these details from the Chairman of Ifelodun Local Government, Shaare. This, our Registrars did in their letter dated 18th January, 2011 signed by our Deputy Chief Registrar, Barr. Z.A. Dagbo.

In his reply dated 14th February, 2011 and signed by one O.F. Aina, on behalf of the Chairman, we had the following reproduced details:

a. That the said MR. ABDUL MUMIN IDRIS is our staff in Ifelodun Local Government.

b. That he is presently on the rank of SENIOR ESTATE OFFICER on GRADE LEVEL 09/6.

c. That his gross salary per month stands at ₦29,112.48

d. That his Net take home stands at ₦11,664.12 per month.

In view of this development, we decided to award and we hereby award ₦4,000.00k Naira only for maintenance of Zainab on monthly basis with immediate effect. Similarly, we decided to award and we also hereby award ₦3,000.00k Naira only for maintenance of Rafia on monthly basis too also with immediate effect. The total sum of ₦7,000.00k shall henceforth be paid to our Registry here in Share by

the respondent for the appellant to collect latest on or before the end of every month until further notice. The appellant is also advised to collect same almost immediately the money is paid to our Registry. Money paid however, must be receipted for.

Meanwhile, both awards are reviewable upward or downward in future depending on the economic situation of the respondent. We based this instant decision on the following Qur'anic provision:

" لينفق ذو سعة من سعته ومن قدر عليه رزقه فلينفق مما آتاه الله لايكلّف الله نفساً إلا ما أتاها..... "

(سورة الطلاق : ٧) .

Let the rich man spend according to his means; and the man whose resources are restricted, let him spend according to what Allah has given him. Allah puts no burden on any person beyond what He has given him……(Q65:7)

On the issue of access to the children, by their father, the respondent, we hereby order that the appellant should allow this to happen as frequently as possible without any acrimony or rancor.

Finally, this appeal succeeds and we hereby declare it so.

SGD	**SGD**	**SGD**
(M.O. ABDULKADIR)	**(S.O. MUHAMMAD)**	**(S.M. ABDULBAKI)**
KADI,	KADI,	KADI,
8/3/2011	8/3/2011	8/3/2011

(8) IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIA
IN THE SHARIA COURT OF APPEAL OF LAFIAGI JUDICIAL DIVISION
HOLDEN AT SHARE ON TUESDAY THE 8TH DAY OF MARCH 2011.

BEFORE THEIR LORDSHIPS:-

S.O. MUHAMMAD - HON. KADI.

S. M. ABDUBAKI - HON. KADI.

M. O. ABDULKADIR - HON. KADI.

APPEAL NO. KWS/SCA/CV/AP/LF/04/2010.

BETWEEN

EGIBORIBO SODEGBA - APPELLANT

AND

MUHAMMED NDAMAKA - RESPONDENT.

principles:

1. An appellant Court can set aside the decision of an Area Court if it did not follow the laid down law and procedure.
2. Sharia Court of Appeal has power to make any order it considers necessary during justice whether or not such order has been asked for by any party.
3. A layman can make his claim in any form he wishes or understands.

STATUES/BOOKS REFERRED TO:

- Order 3 Rule 3 (a-c) of SCA Rules cap S.4 laws of Kwara State 2006.

JUDGEMENT: WRITTEN AND DELIVERED BY S.M. ABDULBAKI

This suit is an appeal against the judgment of the Area Court 1 Shonga delivered on 4th day of March, 2010. The appellant was the

defendant before the lower Court, while the respondent was the claimant. The claimant went before the lower Court for its assistance to claim his daughter from the defendant. He explained that he had earlier in a previous process informed the court that, when the defendant was divorcing him before the court, she was carrying pregnancy for him which resulted to the daughter now being claimed. That the court then ordered him to be paying ₦50 per month for feeding of the baby, now the daughter. He has started making the payment when the father of the respondent instructed her to sue him.

But the respondent in reaction to the claim and the explanation by the appellant as above, denied all the claims saying that she did not carry pregnancy for the claimant saying that when the divorce suit was being heard she denied carrying pregnancy for him because at the time she was leaving his house she was menstruating. Then the case was heard by the trial court. The appellant through his agent tendered two records of previous suits of the lower court though presided over by different judge to buttress his claim. The respondent, through her father's friend counter claimed for expenses incurred on the daughter, the subject matter of the suit. The total amount counter claimed is the sum of four hundred and twenty three thousand, two hundred Naira only (₦423,200.00).

The trial judge held that he could not grant the amount counterclaimed by the respondent because no receipt was tendered but asked the appellant to refund Eighty thousand Naira only (N80,000.00) to the respondent and ordered that the daughter be delivered to the respondent on payment of the awarded sum of Eighty thousand Naira only (N80,000.00) The trial judge in the judgment also granted the respondent free access to the daughter.

The appellant was not happy with the judgment of the trial court and on 22nd March, 2010 initially filed a Notice of Appeal with four (4) grounds of appeal. By 9th day of November, 2010 through amendment sought and granted by this court, filed a Notice of Appeal with three (3) grounds of appeal through his counsel. The first Notice of Appeal with the four (4) grounds of appeal did not contain any relief while the latter Notice of Appeal with three grounds of appeal, contains three (3) reliefs. The Amended grounds of Appeal are as reproduced.

GROUND ONE

The lower trial area Court 1 Shonga erred in Law when it held that the daughter of the Appellant should be delivered to her father

PARTICULARS

(a) The claim of the Respondent at the lower trial Court was the court assistant (sic) to claim the daughter from the Defendant (now Appellant)

(b) The Claim of the Plaintiff (now the Respondent) was about paternity and not custody.

(c) The Plaintiff (now the Respondent) never raised or contested the issue of custody of the said daughter at the lower court.

(d) The Plaintiff (now Respondent) never gave evidence as regards the issue of custody of the daughter and he never called any witness or witnesses to give evidence in this respect.

(e) The decision of the lower trial Court Shonga of 4/3/2010 has occasioned a great miscarriage of justice against the Appellant.

GROUND TWO

The lower trial court Shonga misdirected itself when it ordered the Custody of the Appellant's daughter to be with the Respondent herein.

PARTICULARS OF MISDIRECTION

(a) A Court of Law is not enjoined to grant a prayer not asked for by parties before it.

(b) None of the Parties before the lower trial Court asked for the custody of the daughter of the marriage.

(c) Assuming without conceding that either of the party asked for the Custody, the lower court did not followed (sic) and applied (sic) the appropriate Law before granting the custody of the said daughter to the father who was the Plaintiff (but now the Respondent)

(d) It is trite that no Court of Law shall perform the duty of charitable institutions by awarding to a party to a suit that which the party did not prayed (sic) or asked (sic) for,

(e) The order of the lower trial Court Shonga granting custody of the daughter of the marriage to the Respondent herein is null & void and ought to be set aside.

GROUND THREE

The decision of the trial area Court 1 Shonga delivered on 4/3/2010 is against the weight of evidence.

4. RELIEF SOUGHT FROM THE SHARIAH COURT OF APPEAL.

(a) AN ORDER of this Honourable Court allowing this appeal in its entirety.

(b) AN ORDER of this Honurable Court setting aside the orders of the Area Court 1 Shonga made on 4/3/2010 and possibly order for retrial of the case.

(c) AND FOR SUCH FURTHER ORDER(S) as this Honourable Court may deem fit to make in the circumstances of this appeal.

On 7th December, 2010 when this appeal came up for hearing, the appellant's counsel, Joseph Oboite, Esq. informed the court that the matter was slated for hearing and was ready for the hearing but the respondent's counsel, Adeyemi Olorunleke, esq. who held the brief of Wahabi Ismaila, Esq. sought for adjournment because he said it was that morning that he got the file for the case. However this court felt that due to the previous adjournment this matter had suffered and since this matter has been previously adjourned that day for definite hearing, and by the agreement of the counsel to both parties, decided to listen to the argument of the appellant's counsel only and gave the respondent's counsel another date for his reply.

The appellant's counsel, in his submission raised two (2) issues for the determination of the appeal as follows:

1. Whether the judgment of the lower Area Court in awarding custody of the only daughter of the marriage to the respondent, was proper when the respondent did not pray for custody and there has been no evidence to that issue.
2. Assuming without conceding that the award of custody of the only daughter of the marriage to the respondent was proper and in order, whether a court can award custody of a sixteen (16) years old girl to a man under Sharia Law.

On the first issue, he submitted that the judgment of the lower court was perverse, not proper and absolutely not in order. He said further that the lower court judge misdirected himself when he awarded the custody of the daughter to the respondent when there was no such prayer before him and when there was no evidence for the award. He submitted further that there is no evidence in the record of the lower court as regards who is entitled to the custody of the child because none of the parties led evidence with regard to issue of custody. He said that the claim before the court by the respondent herein before the lower court is "Court Assistance to Claim the Daughter from the Defendant" cannot mean claim of custody of a child. According to the learned counsel to the appellant, the claim of the respondent means claim of paternity and not custody of the child. He therefore urged this court to resolve the first issue in favour of the appellant and to hold that the award of custody is improper.

On the second issue, he submitted that assuming without conceding that the award of custody by the lower court was proper and in order, the trial court misdirected himself when he awarded custody to a man, the respondent herein. He argued that the position of the law is that custody of a child whether male or female is generally granted to the mother. Except there is a compelling reason to do otherwise and that if for any reason a mother is found not to be capable of taking care of the child, then the custody must go to the relation of the mother first and not to the father like the respondent in this case. He cited the case of ALABI VS ALABI (2008) ALL Federation Weekly Law Report Part 418 page 245 at 218 and the decision of this court in RAKIYAT SADIQ VS SADIQ reported in (2005) Annual REPORT OF SHARIA COURT OF APPEAL, Ilorin, Kwara State pages 89 to 8. He submitted that the age of the child, at the time of the decision by the lower court was sixteen (16) years and for that reason, the respondent is not the proper person to

be awarded the custody of the daughter more so when the lower court has not exhausted all the necessary steps to do otherwise. He prayed this court to allow the appeal and set aside the order of the trial court and possibly to order for a retrial of the matter.

The learned counsel to the respondent, Wahabi Ismail Esq. started his submission by saying that his response to the submission of the appellant's counsel address would be in two fold. First, he argued that there has been no valid appeal before this honourable court. He sought the leave of this court to raise the issue.

The learned counsel to the appellant objected saying that raising such issue would take the appellant by surprise because the respondent's counsel had appeared twice in the appeal and did not indicate his intention to raise the issue of competence or otherwise of the appeal. He said further that the other counsel who had appeared for respondent too, did not show any idea of validity or otherwise of the appeal. He then urged this court not to listen to the issue orally.

In his reply the learned counsel to the respondent, said that he could have indicated his objection to the validity or otherwise of the appeal if the method or procedure before this court is by way of filing brief of argument or filing written address. He submitted that such objection would have been incorporated in the Reply Brief. That he decided to raise the issue at this time due to the fact that the procedure before this court is by oral submission by the parties and counsel.

Due to the fact that the accepted practice in this court is to allow a party making a submission before this court be given the chance to complete such submission before the other party is allowed to make a reply submission, this court ruled allowing the counsel raising the issue of validity of the appeal to complete.

So the learned counsel to the respondent went on by saying further that the original Notice of Appeal in this appeal contains five

grounds but that Notice did not ask for any relief. He then submitted that any initiating process be it write of summons or Notice of Appeal must seek prayer or relief for it to be valid otherwise that Notice of Appeal shall be empty and invalid. He said further that a Notice of Appeal without relief or prayer from the court will naturally render the determination of issues, in the appeal, academic but that a court of law exists for real life issues between parties before it. There is no jurisdiction in any court to proceed with the matter for the purpose of rendering advisory opinion or hypothetical opinion. He submitted that this court will not, in exercise of the power of the court assume jurisdiction on this suit when the appellant is not asking for a relief. He argued that if it may be said that this court, being Sharia Court of Appeal may give to a party what has not been asked for. He said that principle will not apply in this appeal. He argued that for the appellant not asking for a relief, the matter borders on the competence of appeal and consequently, the jurisdiction of this court. It argued that it is only when an appeal is competent that the court will have power and jurisdiction to examine the grounds for the purpose of granting relief. He referred to the case where it is said that a competent Notice of Appeal is the foundation of any appeal – The DIBELCO NIG. LTD VS NDIC (2003) FWLR part 179 Page 1220 at 1236; DICKON IMASOGI VS COOPERATIVE BANK LTD & OR (2003) FWLR part 143 page 290 at 297. He therefore urged this court to hold that the appeal is incompetent and to strike it out.

On the Amended Notice of Appeal which was filed on 9th November, 2010, he submitted that an amendment to an incompetent process will not have the effect of curing the incompetence inherent in the process amended. This is because where a process is incompetent, it is not only incompetent but it is also lifeless. No amount of amendment will infuse life to an otherwise incompetent and lifeless process. He cited the case of NWAGWE VS OKERE

(2008) FWLR Part 431 Page 843 at 864. He argued that the court will not entertain the matter where it has no jurisdiction not even in the interest of justice SOSSA V FOKPO (2000)FWLR Part 22 Page 111 at 1126; FGN VS OSHIOMHOLE (2004) ALL FWLR Part 209 page 97 at page 980. He therefore urged the court to strike out this appeal. He said assuming but not conceding that if the appeal is held to be competent, he submitted that the complaint of the appellant is not genuine and unnecessary.

On the appellant's formulated issues, number one that whether the court (lower) is proper in awarding the child to the respondent in the circumstance of this case. He explained that the summary of the case in the lower Court as can be gathered from the lower Court records was that when the appellant divorced the respondent, the appellant was pregnant for him. The position of the respondent as the plaintiff was that the appellant has been remarried then she should return his child to him. He referred to page 3 of the records. He said that the issue before the lower court is not custody but paternity. The consequences of the finding of the lower court that the child was fathered by the respondent herein and coupled with the issue of the appellant's remarriage to another man then, the order made by the lower court for delivery of the child to the respondent is proper and just in the circumstance of the case. He urged the court to dismiss the appeal. He further submitted that all the authorities cited by the appellant's counsel are not relevant to this suit.

S.A. Bamidele, Esq. in reply to the submission of the respondent's counsel, started by praying the court to refuse the objection raised by the respondent's counsel saying that the appeal is proper and in order with reference to Order 3 Rule 3 (a - c) of the Sharia Court of Appeal Rules CAP S.4 Laws of Kwara State 2006 which talks about filing of an appeal from the lower court to Sharia Court of Appeal. He urged this court not to place reliance on the authorities cited by the respondent's counsel because they are

authorities decided on the principle of Common Law and that the facts of this appeal is not the same in the cited authorities. He pointed out that what the case of DIBELCO VS NDIC talks about was an amendment which changed the original grounds of appeal completely whereas in the instant suit, the respondent was talking about prayers the appellant sought to incorporate in the amendment by virtue of Order 3 Rule 3 (c) He said by the rule of this court the appellant can come to court to dictate the amendment orally. He urged this court to discountenance the case cited by the other party. He submitted that what is important in this situation is the understanding of the court what is the prayer of the appellant, then, the court can go ahead to do substantial justice. He relied on S.13$^{(d)}$ of the Sharia Court of Appeal Law, Law of Kwara State 2006. He cited the case of BELI VS TIJANI UMAR (2005) ALI FLR Part 290 Page 1520 at Page 1531. He prayed the court to allow the appeal in the interest of justice and to hold that the respondent's objection is foreign to Islamic law procedure.

On our part, we have gone through the record of proceedings and we also reflected on the submission of the learned counsel to the parties. In our view, the main issue involved in this appeal is whether the custody granted to the respondent was proper and in accordance with the law and procedure of Islamic Law and whether failure to seek for relief in the Notice of Appeal shall render the Notice incompetent and thus the court has no jurisdiction to entertain the appeal or award anything to the appellant.

We intend to deal first with the issue concerning the jurisdiction of this court in this appeal. Thus, we believe, that an issue of jurisdiction is fundamental in any proceeding. In this appeal the respondent has argued that this court has no jurisdiction to entertain the appeal because the initial process, that is, the first Notice and Grounds of Appeal filed in this appeal did not seek for any relief and that the amended Notice and Grounds of Appeal could

not help the appellant because the first Notice of Appeal has crumbled and became lifeless. So the Amended one could not stay on it. He urged us to refuse the appeal.

But the learned counsel to the appellant urged us to invoke Section 13(d) of the Sharia Court of Appeal Law 2006 to do equity in accepting the Amended Notice and Grounds of Appeal and reject the objection raised by the respondent's counsel.

We ask the question if this court upholds the objection raised, by the respondent's counsel, then, what is the effect of such an appeal before this court. Similarly, if the objection is overruled, of what effect will it be on this appeal. In our view if this court upholds the objection, then this appeal will be dismissed. But if the objection is refused or overruled then the appeal will be heard and determined on merit.

We want to reiterate that this court is empowered and given discretion to do substantial justice in all matters and make orders in that direction. Order IX (1) of Sharia Court of Appeal Rules provides:

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

In the circumstances, we feel that refusal or overruling the objection shall meet justice of this appeal and we so hold. Consequently, the objection raised by the respondent's counsel is hereby refused and overruled. We hold that this court is competent to hear and determine this appeal. We are fortified in our decision to hear this appeal by the fact that when the Amendment was sought there was no any objection raised by the respondent. It is trite that after the amendment has been granted, no reference is made to an

earlier document filed in a matter rather, the court deals with the amended document because the amended document represents the current position of the matter before the court.

This appeal is about whether the custody granted to the respondent is proper. The first thing to examine is whether the claim of the respondent herein before the lower court is about paternity or custody.

On page one of the records, the claim of the plaintiff is put as:

> *Ct– plaintiff: Issue to claim my daughter, which the arrangement of how I will collect my daughter is in process before……..*

This claim, in our view indicated a claim for the custody of the daughter. This is because the plaintiff as we notice is not represented by any counsel and we do not see a layman how best he could have put his claim than what he had done.

Secondly, we examine what the judgment of the lower Court connotes; custody or paternity. The lower Court on page IV of the records said:

> *The court order for the refund of eighty thousand naira to the mother of the daughter. And also order to deliver the daughter to her father after the payment of the money. The mother is also free to see her daughter whenever she like (sic)*

It is our considered view that the lower court actually granted custody of the daughter to the respondent on payment of eighty thousand Naira to the appellant.

This becomes clearer because the trial judge added:

> *The mother is also free to see her daughter whenever she like (sic)*

This last sentence, can be construed to mean, while the custody is transferred to the respondent herein, the appellant was granted free access to the daughter.

The next question now is whether the award of custody of the daughter granted to the respondent was proper and in order as the appellant's counsel argued.

The answer to this question in our view, is that the award of custody is not proper considering the law and the procedure laid down in Sharia. We hold that the learned judge did not follow the normal procedure and the law laid down in custody matter. The decision of this court in appeal NO.KWS/SCA/AP/LF/12/2004 – RAKIYAT SADIQ VS SADIQ ANIMAKUN in (2005) Annual Report of Sharia Court of Appeal, Ilorin is a useful guide in custody matter. Consequently, the judgment of the lower Court is hereby set aside.

Having held that the lower court did not follow the law and procedure in custody matter, then the other issue raised by the appellant as to whether the court can award custody of a sixteen (16) year old daughter to the respondent's has to wait for the outcome of a retrial order to be made here and now before the same trial judge.

From the foregoing we make the following orders.

(1) The retrial order of this matter by the same trial judge is hereby made on the custody of the sixteen year old child in dispute and the duration of such custody.

(2) Order to accelerate the trial within one month when hearing commences.

Appeal succeeds.

SGD	**SGD**	**SGD**
(M.O ABDULKADIR)	**(S.O.MUHAMMAD)**	**(S.M. ABDULBAKI)**
HON KADI,	**HON KADI,**	**HON KADI,**
08/03/2011	**08/03/2011**	**08/03/2011.**

(9) 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 9TH MARCH, 2011.
YAOMUL-ARBIAU 6TH RABIUL AWWAL 1432 A.H.

BEFORE THEIR LORDSHIPS:

I. A. HAROON	**-**	**GRAND KADI**
A. A. IDRIS	**-**	**HON. KADI**
M. O. ABDULKADRI	**-**	**HON. KADI**

APPEAL NO: KWS/SCA/CV/AP/IL/20/2010

BETWEEN

IBRAHIM RAJI	**-**	**APPLICANT**
AND		
RAFAT TEMIMU	**-**	**RESPONDENT**

principle:

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

STATUES/BOOKS REFERRED TO:

- Fawakihu Dawani Vol. 2 , P 220

RULING: WRITTEN AND DELIVERED BY I. A. HAROON

The applicant, Ibrahim Raji filed motion on Notice against the decision of the Upper Area Court IV Pake in the case No U.A.C. 111 CVF/2510 of 9th July, 2010. The respondent herein was Rafat Temimu.

On the 9th March, 2011, when the motion came up for hearing, the respondent is present while the applicant is absent.

Counsel T.M. Onaolapo Esq., appeared for the Applicant while Sulaiman A. Aluko Esq., appeared for the Respondent.

Applicant's Counsel said that before the application is moved, we pray to withdraw the previous notice of Appeal with Case No: KWS/SCA/CV/AP/IL/20/2010 dated and filed 11/11/2010 Ibrahim Raji VS RAFAT TEMIMU.

RULING:

In line with the above prayer of the counsel to the applicant to withdraw the above quoted appeal.

The appeal NO: KWS/SCA/CV/AP/IL/20/2010 is hereby withdrawn particularly when the counsel to the respondent did not object.

SGD	**SGD**	**SGD**
M. O. ABDULKADRI	**I. A. HAROON**	**A. A. IDRIS**
HON. KADI	**HON. GRAND KADI**	**HON. KADI**
09/03/2011	**09/03/2011**	**09/03/2011**

(10) IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIA
IN THE SHARIA COURT OF APPEAL IN THE PATEGI JUDICIAL DIVISION
HOLDEN AT PATEGI ON 15TH MARCH, 2011

BEFORE THEIR LORDSHIPS:

A.A. IDIRS	-	HON. KADI
M.O. ABDULKADIR	-	HON. KADI
A.A. OWOLABI	-	HON. KADI

APPEAL NO. KWS/SCA/CV/AP/PG/01/2011

BETWEEN:

MOHAMMED BABA - APPELLANT

VS

FATIMA MOHAMMED - RESPONDENT

JUDGEM ENT : WRITTEN AND DELIVERED BY A.A. IDRIS

The respondent Fatima Mohammed sued the appellant, Mohammed Ndagiman in an action for termination of their marriage. The suit was instituted before the Area Court of Lafiagi on 17th December, 2010 with suit no 156/2010 and has case No 153/2010.

The termination of marriage sought by the respondent was centered on lack of proper health care by the appellant. From the document placed before us, the appellant was absent throughout the whole proceeding in the trial court, but he sent one Mohammed Suleiman of Gade village to represent him. The trial court later gave decision in favour of the respondent on the 5th January, 2011. The appellant was not satisfied with the decision of the trial court and consequently he appealed to this court on the 24th January, 2011.

When the hearing came up, both parties were in court. The appellant maintained that the respondent sued him at Area Court Lafiagi for divorce. He said that during the court proceedings in the

trial court he was sick and that deferred him from attending the trial court. He later emphasized that though, he was not there in person, but his elder brothers were there to seek for reconciliation and all their efforts to settle the matter amicably were abortive. As a result of this, the divorce was granted by the trial court.

He went further to state that before granting the divorce, he wrote a letter to the trial court, requesting it to transfer their case to Pategi because the trial court has no jurisdiction on the parties before it. He further explained that both the appellant and the respondent were from Patigi Emirate. He further maintained that he was not happy because of the manner in which their marriage was dissolved which made him to appeal, but fortunately, when they went back to their village their parents converged and settle their matters amicably and to strengthen this, both of them came to the court as husband and wife. He therefore urged the court to strike out the appeal.

In her brief response, the respondent maintained that she heard what the appellant said and maintained that she had no objection to the appellant's request.

Having listened to both parties on the withdrawal of the appeal made by the appellant and with no objection from the respondent, in this regard we hereby grant the request for the withdrawal. It is trite in Islamic Law Practice and Procedure that an appellant who has interest to withdraw his appeal should not be coerced to pursue it. This is in conformity with the authority which stipulates:

A plaintiff is he who will be left alone whenever he decides to terminate his suit.

المدعي هو الذي لو سكت لترك على سكوته. راجع فواكه الدوانى ج(2), ص(299).

In view of the above, we strike the appeal accordingly.

SGD	**SGD**	**SGD**
A. A. OWOLABI	A.A. IDIRS	M. O. ABDULKADIR
HON. KADI	HON KADI	HON. KADI
15/3/2011	15/3/2011	15/3/2011

(11) IN THE SHARIA COURT OF APPEAL KWARA STATE OF NIGERIA
IN THE SHARIA COURT OF APPEAL OF ILORIN JUDICIAL DIVISION
HOLDEN AT ILORIN ON WEDNESDAY, 16TH DAY OF MARCH, 2011

BEFORE THEIR LORDSHIPS:

I.A HAROON - GRAND KADI

A.A. IDRIS - HON. KADI

M.O.ABDULKADIR - HON. KADI

MOTION NO, KWS/SCA/CV/M/IL/01/2011

BETWEEN

IBRAHIM RAJI - APPLICANT

AND

RAFATU TEMIM - RESPONDENT

Principle:

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

STATUES/BOOKS REFERRED TO:

1. Ashalu – Madarik Vol .III P. 197
2. Siraju – Salik Vol I P. 198.

RULING: WRITTEN AND DELEVERED BY M.O. ABDULKADIR.

This motion on notice is sequel to the order of this court given on 30th Dec, 2011, Wherein the applicant's motion was struck out as a result of his inability to satisfy a condition precedent before his motion could be heard or be given favorable consideration.

In that motion which is similar to the motion at hand in terms of content and the forms. i.e. the parties. the prayer and even the counsel are the same. The applicant sought for:

(i) The leave and order of this Honorable court for an extension of time for the applicant to apply for leave to appeal out time (sic).

(ii) Leave and Order of this Honourable court for an extension of time and to appeal out of time (sic).

(iii) Leave and Order of this Honorable court to appeal (sic).

(iv) And for such further Order as this Honorable court may deem fit to make in the circumstances of this court (sic).

The applicant's counsel T.M. Onalapo through counsel Kamaldeen Kadir Esq. moved the motion and prayer the court to grant it, while Counsel Sulyman Ayipo replied on behalf of the respondent wherein he vehemently opposed the granting of the motion. At the end of the day this Honourable court refuse and struck out the application on the ground that:-

(a) The affidavit in support of the applicant's motion did not contain sufficient reason for the granting of same.

(b) The applicant did not file grounds of appeal which must prima-facie shall give cause for leave to be granted as demanded by order IV Rule 3 of the Shariah court of Appeal Rule,

It was the contentment of this Honourable court that the two conditions (a) & (b) stated above are condition, precedent the document to which must support the application for enlargement of time within which to filr an appeal. We stated that if one fails, the entire application will fail. Be that as it may, this Honourable court refused and struckout the application because he did not support the motion with a ground or grounds of appeal.

The effect of the order of striking out of the application as decided by the court gives the applicant another opportunity of

refilling the application to make good of his previous mistake, this is what the applicant herein was trying to do when he refilled the application. But it was unfortunate that the applicant did not take time to read our ruling dated 30th December 2011, or he even failed to read the relevant Order IV Rule (a) & (b) of the Sharia Court of Appeal Rule under which he filed his application, had he done so, he would have known the necessary or normal thing to do. It is therefore our considered view that all the action of the counsel is tantamount to an abuse of court process, it is odd and not right, it does not help the court, the lawyer should develop the habit of reading and understanding procedural law of the court before he embarks on any document to be filed before the court, this will guide him against failing into abnormalities. The same mistake he committed in the first motion was the same mistake he had committed in the instant one.

In the lights of foregoing therefore, this court cannot do otherwise than to repeat it's previous decision and order to strike out the application and we so ordered. The application is hereby struckout.

SGD	**SGD**	**SGD**
A.A. IDRIS	**I.A. HAROON**	**M.O.ABDULKADIR**
HON. KADI	**HON. GRAND KADI**	**HON. KADI**
16/03/2011	**16/03/2011**	**16/03/2011**

(12) 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 7th DAY OF APRIL, 2011

BEFORE THEIR LORDSHIPS:

S.O. MUHAMMAD - HON. KADI.
A.A. ADAM - HON. KADI.
S.M. ABDULBAKI - HON. KADI.

APPEAL NO. KWS/SCA/CV/AP/IL/19/2010.

DR. JIMOH RABIU OLUSEGUN - APPELLANT

AND

BASHIRAT GIWA - RESPONDENT

principle:

Judges are of three categories two categories will surely go to hell fire while only one will enter paradise. The judge who knows the law will surely enter paradise. The second is the judge who knows the law but refuses to judge in accordance with the law due to subterranean motive he will enter hell fire. The third judge is one who is not learned in the application law but arrogated the power to himself he will surely end up in the hell fire.

STATUES/BOOKS REFERRED TO:

1. Fawakihu Dawaniy Vol. 2 P 220
2. Section 62 (1) of the Laws of Kwara State, 2007

JUDGEMENT: WRITTEN AND DEVLIVERED BY S.O. MUHAMMAD

This appeal is challenging the jurisdiction of Hon. M.N. Audu, the judge of the Area Court Grade I No.2 Centre Igboro, Ilorin for sitting on this case on 4/10/2010 when he had been transferred to another court earlier. The parties are Dr. Jimoh

Rabiu Olusegun, appellant/defendant represented before us by S.O. AbdulKareem Esq. and Bashirat Giwa, respondent /plaintiff, represented by A.S. Akinola Esq.

The ground of appeal is hereby reproduced:

> *The learned trial judge seriously erred under Islamic law and procedure when he assumed jurisdiction in respect of the suit on the 4th day of October, 2010 after the trial judge had been transferred since on the 30th day of September, 2010 from the Area Court Grade I, Centre Igboro, Ilorin, Kwara State to another court and when the Respondent in addition to that has expressed his lack of confidence in the judge(sic*

When we sat to hear the appeal on 21/2/2011, the appellant counsel stated the facts of the case (before the trial Area Court) as being a divorce suit and custody of children instituted by the respondent. The appellant sought for amicable settlement out of court but the trial judge refused and ordered that the respondent should continue with the hearing of the case and prove her claims of divorce and custody of the two children of the marriage. The appellant was not happy with this stand of the judge and appealed against it to us in a sister appeal No. KWS/SCA/CV/AP/IL/16/2010. The appeal under reference was dated and filed on 22/9/2010 at our Registry.

While the appeal was pending, the trial judge went ahead to hear the case. The next line of action taken by the appellant was to petition the Director of Area Courts (DAC) at the judiciary headquarters requesting the DAC to either direct for stay of proceedings or to transfer the suit to another court. This letter is Exhibit B before us.

Interestingly, the respondent too showed displeasure with the attitude of this judge and lack of confidence in him, she too wrote a letter to the DAC to that effect. The letter which was dated 29/9/2010 is Exhibit D before us. This was the very day, maybe by coincidence, that the trial judge was transferred to another court. Maybe too, by another coincidence, this same day of 29/9/2010, the respondent filed an application in the same trial Area Court entitled: NOTICE OF DISCONTINUANCE OF ACTION. This is Exhibit C before us. The now transferred trial judge was aware of this notice as per the record of proceedings before us. He sat on it and terminated the case on 4/10/2010.

The termination of the case brought about this appeal.

The particulars of the ground of appeal are hereby reproduced for clarity purposes:

1. *The Respondent had shown before the trial judge that he is not interest or lack confidence in the trial judge going on with the case (sic).*
2. *The trial judge did not wait for the action of the Directorate of the Area Court before on his own volition and judicial rascality went on to discontinue the case on the application of the claimant despite the fact that the Respondent counsel made it known to the trial judge that his client lacks confidence in the trial judge (sic).*
3. *The trial judge did not get the fiat of the Chief Judge or the Directorate of the Area Court before he sat in respect of the case, in the court from which he has been transferred (sic).*
4. *The attitude of the trial judge showed that he had interest in the matter and that he had a personal purpose as against the interest of justice to serve (sic).*

5. *The order of discontinuance made by the trial judge was made in bad faith, to prejudice and render the prosecution of the appeal impossible and the outcome nugatory.*

According to the learned counsel for the appellant, when he started to make his submissions before us, the issue for our determination is: *whether considering the facts and circumstance of this case before the trial Area Court judge, the proceedings of 4/10/2010 was not a nullity.*

In arguing this sole issue, the learned counsel drew our attention to S.15 (1) (c) of the Area Court Laws of Kwara State 2006 effective from April, 2007 to the effect that what confers jurisdiction on the court is the law that establishes that court, the subject matter and the composition of the court as to the judges. He also cited a book titled "*Islamic Law: The Practice and Procedure in Nigerian Courts*" by Adamu Abubakar Esq. Pages 27 and 28, also to buttress his point. He used this authority to submit that it is a cardinal principle under Islamic Law that for any judge to assume jurisdiction on any matter, such a judge or *Kadi* must be authorized by *Imam* (meaning the authority) to do so. He added that for a transferred judge to re-assume jurisdiction over the case he started, there shall be a FIAT from the Chief Judge of the State to do so otherwise such a judge would be committing an offence of magnitude as per S.62 (1) of the Laws of Kwara State. He submitted further that the trial judge in this appeal was not given FIAT to sit on 4/10/2010 after he had been transferred. Our attention was also drawn to the 4-page record of proceedings particularly p.1 paragraph 3 lines 15-18 and p.2 lines 1-5. Pages 3 and 4 of the record containing the rulings of the court were also referred to dated 4/10/2010.

On the Exhibits annexed to the appeal, i.e. Exhibits A – D, the learned counsel submitted that if these exhibits were critically

considered, the decision of the Area Court cannot be justified because, according to him, in Exhibits B and C in particular, both parties showed lack of confidence in the trial judge to continue to hear their case. Therefore, the decision of the Area Court judge was in violation of S.15 (1) (c) and S.3 (5) both of the Laws of Kwara State ***supra***. It was therefore tantamount to a nullity.

On Exhibits C and D written same day by the same person, i.e. the respondent, the learned counsel for the appellant submitted that the two Exhibits were seeking two separate reliefs from different quarters – a relief from the trial judge and another relief from the DAC. The learned counsel then wondered whether the trial judge had treaded the path of honour which was expected of him by making an order of discontinuance of the case on 4/10/10.

Finally, the learned counsel for the appellant submitted that the action of the trial Area Court judge by discontinuing the suit was prejudicial and an attempt to frustrate the outcome of the sister appeal before the Sharia Court of Appeal referred to *supra* and to also frustrate the action of the Director of the Area Courts. He therefore sought for the following reliefs:

1. *That the suit No. 515/2010 is still subsisting and that the order of the trial Area Court judge, M.N Audu, made on 4/10/2010 is invalid, improper and cannot exterminate the life span of the case.*
2. *An order to set aside the proceedings of 4/10/2010 as to declare same as illegal, null and void, and*
3. *An order declaring any subsequent suit instituted by the respondent in respect of the same subject matter involving the same parties as abuse of court process.*

The respondent counsel began his response by urging us to also allow him to put the facts of the case in the right perspectives

and to put forward also two main issues for our determination. We conceded as we did to the counsel for the appellant. He therefore, submitted that the decision of the trial judge appealed against and the application filed at the trial court which led to the ruling was brought about by delay tactics of the counsel to the appellant. According to him, after many unsuccessful applications to delay the matter at the trial court, the appellant counsel went ahead again and wrote to the Director of Area Courts – this is Exhibit B before us – seeking transfer of the case to another court. The respondent then wrote to the same Director for notification about the intention to discontinue the matter. This letter is Exhibit D before us. There was also a NOTICE OF DISCONTINUANCE OF ACTION before the Area Court judge dated 29th September, 2010 and filed on 30th September, 2010.

This is Exhibit C before us. The trial Area Court judge ruled on this Exhibit and struck out the matter accordingly.

The learned counsel to the respondent then submitted these two issues for our determination:

I. *Whether the appellant's claim that the trial Area Court judge was on transfer to another court has been substantiated before this court.*

II. *Whether the filing and/or service on the appellant of the notice of discontinuance of the petition at the trial court on the appellant herein is sufficient to terminate the suit at the trial court moreso when the trial has not commenced.*

On the first issue, the learned counsel to the respondent submitted that the appellant counsel did not successfully prove that the trial Area Court judge had been transferred from his court as at the time of the ruling of 4/10/10. He contended that the appellant counsel had not shown or exhibited any letter to this assertion and

that neither had he deposed to any affidavit to that effect. In the absence of all these facts, the trial Area Court judge had power to sit and decide the matter before him as it has happened in this case.

On the second issue, the learned counsel submitted that once the notice of discontinuance is filed and served on the appellant that translates to effective termination of the case, especially when hearing has not commenced. He contended further that it is the principle of law that he who institutes an action can equally discontinue same and referred us to the Kwara State Sharia Court of Appeal annual report for 2006 in appeal No. KWS/SCA/CV/AP/IL/10/2005 between Fatima Iti and Mohammed Atanda Iti P. 114 at P.115.

He submitted further that a claimant can even discontinue his case without the leave of court before hearing commences. He cited Babatunde vs. P.A.S and T.A. Ltd. (2007) AFWLR part 372 P.1721 at P.1742 paragraph (C) and at P.1744 paragraphs (C) and (E).

On the notice of discontinuance written to the Director of Area Courts, (i.e. Exhibit D), the learned counsel submitted that the notice was a mere information because, according to him, it is the right of the respondent to decide whether or not to prosecute her case. The learned counsel submitted further that the only option left for the appellant was to ask for cost if he had taken any steps.

Furthermore, the learned counsel argued that this instant appeal is meant to further frustrate the respondent and to keep her perpetually in bondage by the appellant's action which insisted and still insisting that the respondent cannot withdraw her case. He referred us to Oluyemo vs. Titilayo (2009) AFWLR Part 485 P.1674 at P. 1694 paragraph(E). In view of this, he contended, and in view of the 3rd relief being sought by the appellant's counsel he comdeed that this appeal was brought in bad faith in order to

prevent the respondent from exercising her rights of ventilating her grievances in court.

On the argument of the learned counsel to the appellant that both parties consented that the case be transferred to another court and using the respondent's letter to the DAC to support this argument, the learned counsel to the respondent submitted that the contents of their letter were misconstrued. According to him, the letter was meant only to notify the Director of the Area Courts (DAC) of the discontinuance of the case adding that his client (i.e. the respondent) never agreed on the transfer of the case to another court. He therefore, urged us to discountenance this argument.

On Exhibits C and D dated same day, the learned counsel submitted that the two Exhibits were addressing the same issue adding that the purpose of Exhibit D as earlier argued was to notify the Director of the Area Courts of the discontinuance of the case. It is not the intendment of law that the Directorate should give order before the respondent can withdraw her case from the trial Area Court. This is because, according to him, the issue of transfer would no more be relevant. The issue of transfer would therefore, become an academic exercise.

On the appellant's reliefs 1 and 2 being sought from us, the learned counsel to the respondent urged us to discountenance with them both because, according to him, the case had been successfully withdrawn from the trial Area Court. To hold otherwise will also become an academic exercise too.

Finally, the learned counsel argued that if we eventually hold that this case is still existing and subsisting at the trial Area Court, our holding will have no effect whatsoever because this court cannot force the respondent to continue with the matter taken to court in the first instance by her and for which now she no longer has interest in pursuing. He therefore urged us to decide this appeal

in favour of the respondent and to consider the issue appealed against as already dead, buried and therefore cannot be resuscitated.

On his second chance, the appellant's counsel responded to all the points of law raised by his learned friend, the respondent's counsel. On the first issue of transfer of the Area Court judge not being successfully proved, the appellant's counsel submitted that this argument is unfounded because, according to him, when issues have been established on record and that record is before the appeal court, such facts are deemed to have been established and no further proof is required. According to him, this fact is in the record of proceedings (ROP) before this court that the appellant raised this issue of transfer of the judge and that the judge did not debunk this assertion in his ruling. Therefore, he argued further, silence of the judge signified his admission that he had been transferred and insisted on his submission that the judge had no power to sit in that court again as a judge over this case after he had been transferred to another court talkless of making order of discontinuance of the case. He went further to submit that the appellant was not contesting the right of the respondent to discontinue her case. What the appellant was contesting was that such application for discontinuance of the case before the Area Court should be granted by a person that was legally qualified to do so. According to him, the law is that when an action is void, such an action is void **ab initio** because one cannot build something on nothing and expect that thing to stand. He cited Benjamin Leonard Macfoy Vs. United Africa Company Limited (2000) 15 WRN P.185 at pp. 188 and 189 to buttress his contention.

On the second issue, the learned counsel to the appellant responded to the effect that it is not sufficient that the filing and service of the notice of discontinuance is effective to terminate the case at the trial court and submitted that the case of P.A.S and T.A Ltd cited by the learned counsel to the respondent is irrelevant to

this case because, according to him, the case had no bearing to Islamic law. The case did not originate from the Area Court; the procedure in the case is different from the procedure of the Area Court.

On Exhibit D which is the notice of discontinuance written by the respondent to the Director of Area Courts (DAC), the learned counsel to the appellant submitted that he conceded to the argument that the contents of the letter are not to the effect that the matter be transferred from the trial court. Nevertheless, the requirement of the law still demands that the trial judge should get FIAT before he could sit on the case after he had been transferred from the court. He repeated his citation of S.15 (1) (c) of the Laws of Kwara State ***supra*** and urged us to allow his appeal.

We read the proceedings and also perused the 4 No. Exhibits annexed thereto, Exhibits A – D. We also painstakingly and attentively listened to the highly intelligent counsel for both parties – for and against. We humbly, cautiously and carefully ruminated over all the submissions before us by both counsel including critically studying and subsequent consideration of all the exhibits annexed thereto. We also read and re-read the submitted issues for our determination in this appeal by both counsel. While the learned counsel for the appellant submitted only one issue and sought 3No. reliefs from us as stated elsewhere in this judgment, the learned respondent counsel submitted 2No. issues also for our determination. We then resolved to first and fore-most address the issue of jurisdiction of the trial Area Court judge in this matter as argued at length by the learned counsel to the appellant viz-a-viz the exhibits attached. We had to, and we did go back to the record of proceedings before us, gave it another critical look including the exhibits. What we discovered was really revealing! In the first

instance, this case on appeal was heard and decided on 4th October, 2010. The learned counsel to the appellant argued that the judge should not have sat on this case on that day because he had been transferred to another court before this date. At p.3 lines 28 and 29, the trial judge, when reviewing this case before him recorded what the appellant counsel said on his transfer. He recorded that the appellant counsel "**had information that the judge handling the case is on transfer**" (emphasis is ours). But the judge refused to address this issue in his judgment. He neither acknowledged nor denied same. We then instantly agreed to clarify this issue by invoking 0.3 R. (7) (2) (g) of the Sharia Court of Appeal Rules which empowered us to do so. To this effect, we directed our Registry to write to the Director of Area Courts to help us shed light on this issue. Our Registry's letter was written and delivered on 2/3/2011. The Director's reply of 3rd March, 2011, which was received at our Registry on 4th March, 2011 reads as follows:

REF.NO.JUD/23/VOL.XIII/87
Judiciary Headquarters,
Inspectorate Office,
Ilorin.
3rd March, 2011.

The Chief Registrar,
Chief Registrar's Office,
Shariah Court of Appeal,
Ilorin.

Sir,

RE: SUIT NO. 515/2010 CASE NO.458/2010
BETWEEN BASHIRAT GIWA VS. DR. JIMOH RABIU OLUSEGUN

With reference to your letter Ref. No. KWS/SCA/CV/AP/IL/19/2010 dated 03/03/2011 refers.

Hon. M.N. Audu was transferred from Area Court 1 No.2 Ilorin on the 29th day of September, 2010 to Area Court 1 Iporin.

(SGD)
ALHAJI IBRAHIM B. KOTO
Director Area Courts.

Photocopies of this reply were put in our files for our information and guidance by our Registrars. We read it again and again and resolved to go back to the records of proceedings to make some comparisons **viz-a-viz** the submission of both learned counsel and the exhibits annexed thereto. Our findings revealed that the ruling in this case was given by the trial judge on 4/10/2010 and the letter of the Director of Area Courts clearly stated that he had been "**transferred from Area Court 1 No.2 Ilorin…**" where he was hearing the case "**on the 29th day of September, 2010 to Area Court 1 Iponrin**". The question then arose: Where did he get or receive the authority (FIAT) to sit and to decide this case on 4/10/2010 as he did when he had been transferred earlier? Throughout the record of proceedings we could not find the answer. The only thing the judge said at p.4 lines 1 and 2 was that "**… this court is an Area Court where the Law say to do substantial justice.**"(sic) Where is this substantial justice? We therefore wholly agree with the learned counsel to the appellant that "the attitude of the trial judge showed that he had interest in the matter and that he had a personal purpose as against the interest of justice to serve."

Moreover, by the contents of the letter of the Director of Area Courts we also agree with the learned counsel to the appellant that since the judge had been transferred from his court to another court he cannot sit to hear the same case before him without the Chief Judge's FIAT to do so.

This development has certainly raised the question of jurisdiction and it should be tackled, addressed or determined first in this appeal before considering any other issues arising therefrom. Adamu Abubakar Esq. in his book: "Islamic Law THE PRACTICE AND PROCEDURE IN NIGERIAN COURTS" puts it better when he writes:

> *Basically, jurisdiction is crucial, foundational, fundamental, radical and pivotal to adjudication. If it is missing, then everything in the adjudicatory process would be equal to nothing be it good or bad. Jurisdiction is not conferred on courts by mere orders of trial courts, agreement of the parties it is either that of a court , constitutionally or statutorily has jurisdiction vested on it or not. The issue of jurisdiction whether limited or not is not novel to Islamic law. It has long been acknowledged as a valid functional aspect of Islamic law jurisprudence, and therefore is crucial, basic and fundamental to the adjudicatory process under Islamic law.*
>
> ***(see P.27 of the book under reference)***

Relating this position of the Islamic Law to this case, we concluded that M.N. Audu, the trial Area judge sat and determined a case when he had no jurisdiction to do so. His action was neither by mistake nor accidental. It was purely arbitrary. His action did not only amount to judicial rascality but it is also condemnable under both Islamic Law and also under any other legal system. For instance, under Islamic Law a judge who arbitrarily, hears a case where he lacks jurisdiction falls within the second and the third categories of judges stated in ***Fawakihu Dawāny*** Vol.2 p.298. The law provides:

قضاة ثلاثة اثنان في النار وواحد في الجنة: رجل عرف الحق فقضي به فهو في الجنة ورجل عرف الحق ولم يقض به وجار في الحكم فهو في النار ورجل لم يعرف الحق وحكم للناس بالجهل فهو في النار.

"Judges are of three categories; two categories will surely go to hell fire while only one will enter paradise. The judge who knows the laws and decides in accordance with the law will surely enter paradise. The second is the judge who knows the law but refuses to judge in accordance with the law due to subterranean motive he will enter hellfire. The third judge is one who is not learned in the applicable law but arrogated the power to himself he will surely end up in the hell fire."

Furthermore, S.62 (1) of the Laws of Kwara State, 2007 regards adjudication without authority (i.e. jurisdiction) as criminal and liable to conviction. The law provides:

> *Any person who shall exercise or attempt to exercise judicial Powers within the area of the jurisdiction of a duly constituted Area Court, except in accordance with the provisions of any written law,* ***shall be liable on conviction before the High Court, a Magistrate's Court of competent jurisdiction, an Upper Area Court or an Area Court Grade I to a fine not exceeding five thousand naira or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment***
>
> *(Emphasis is ours)*

We wholeheartedly agree with the learned counsel to the appellant that one cannot build something on nothing. We conceded to his citation **supra** on this and hereby quote holding 6 at pp.188 and 189 as follows because it tallies completely with the position of the Islamic Law:

> *If an act is void, then it is in Law a nullity. It is not only bad, but incurably bad… It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse….*

Indeed, this is the home truth and that is why we decided to ignore all the submissions of the learned counsel to the respondent including all his citations and authorities. They boil down to nothing and we so hold.

Therefore, and in view of the foregone, we held that the trial Area Court judge had no jurisdiction to hear this case in the first instance. The proceedings and the ruling in Suit No. 515/2010 decided on 4/10/2010 are therefore hereby set aside as illegal, null and void and of no effect. We also held that as from 30th September, 2010 when Exhibit C was filed at the trial court, that exhibit and the action therein are still alive, existing and subsisting. Its life time is not yet exterminated. It is still pending at the Area Court Grade I No.2 Ilorin and we declare it so. In view of this, we also hereby order that the two parties, that is the appellant and the respondent, shall go back to the same trial court for the new judge there now to hear and determine the Exhibit, that is Exhibit C

which is NOTICE OF DISCONTINUANCE OF ACTION dated 29th September, 2010 and filed on 30th September, 2010 by the respondent counsel.

Finally, in view of the contents, purpose and interpretation of S. 62(1) of the Laws of Kwara State, 2007 quoted **supra**, it is our strong opinion that this Area Court judge has committed an unpardonable offence and we hereby order that the Director of Area Courts shall take appropriate action according to law to serve as deterrent to other judges under his control. They must desist from taking Kwara State Laws for granted because doing so is akin to playing with fire which will certainly consume them. The Law in NOT put there for fun or for its sake. It must be obeyed, complied with and respected.

Appeal Succeeds.

SGD	**SGD**	**SGD**
S.M. ABDULBAKI	**S.O. MUHAMMAD**	**A.A. ADAM**
HON. KADI,	HON. KADI,	HON. KADI,
31/3/2011	31/3/2011	31/3/2011

(13) IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIA IN THE SHARIA COURT OF APPEAL IN THE ILORIN JUDICIAL DIVISION HOLDEN AT ILORIN ON (THURSDAY) 7TH APRIL, 2011

BEFORE THEIR LORDSHIPS:

S.O. MUHAMMED - HON. KADI

A.A IDRIS - HON. KADI

S.M. ABDULBAKI - HON. KADI

APPEAL NO. KWS/SCA/CV/AP/IL/16/2010

BETWEEN:

DR. JIMOH RABIU OLUSEGUN - APPELLANT

VS

BASHIRAT GIWA - RESPODENT

principles:

a) Under Islamic law, a judge should initiate arbitration in any case of rift between husband and wife before him.

b) A judge, under Islamic law, is allowed to use his discretion only if it will bring about justice and fair day to both parties before him.

c) A judge, under Islamic law should make pronouncement on all matters before him.

d) It is mandatory on a judge in Islamic law to investigate and ascertain all the issues before him before drawing his conclusions.

JUDGEMENT: WRITTEN AND DELIVERED BY A.A. IDRIS

Bashirat Giwa plaintiff/respondent represented before us by AbdulRasheed Ahmad Esq., instituted a court action against her husband Dr. Jimoh Rabiu Olusegun, the defendant/appellant who

was represented by S.O. AbdulKarim Esq, for divorce of their six years old marriage blessed with two children, on the basis of maltreatment. The action was filed at the Area Court Grade I No 2, Center Igboro Ilorin on Suit No: 515 / 2010, Case No: 458 / 2010 which was decided on the 13th September, 2010.

The appellant at the trial court denied the allegation and sought for an adjournment to pave the way for amicable reconciliation. After the submission of the counsel for an against, the trial court ruled that the case was purely (al-talliq Qadi) thus if the appellant moving the court to order her release on the ground that she had been subjected to the cruelty of her husband which is totally contrary to Islamic marriage contract.

Being aggrieved by the above ruling, the appellant Dr Jimoh Rabiu Olusegun appealed to this Honourbale Court on the 13th October, 2010.

The appellant filed the following four grounds of appeal and its particulars.

1. **GROUND ONE**

The Learned Trial Judge misdirected himself in the Islamic procedural Law when he refused the parties of the opportunity to attempt settlement or reached amicable settlement even when the respondent specifically prayed for same. (sic)

PARTICUALRS OF THE GROUND

1. Judicial separation of husband and wife though it is legally permissible and allowed in the Islam but is the most hated in the sight of Allah. (sic)
2. The trial court in the line with the particular one above always give rooms to move for amicable settlement between the parties. (sic)

3. The trial Court No. 2 Judge did not give room to the move for the parties to the suit to settle which was made on the request of the respondent but in its stead ordered that the plaintiff should go on to prove her claims for divorce against the respondent. (sic)
4. The trial court has not given such opportunity to the parties in the suit before. (sic)
5. The procedure adopted by the learned trial Judge is unknown to Islamic Law and it is anachronistic to the spirit of Islam family particularly the interest of the two children of the marriage. (sic).

2. GROUND TWO

1. The Learned Trial Judge erred in law when he woefully filed to make any pronouncement on the issue of access to children raised by the respondent through his counsel that he has not seen the two children since 25th day of July, 2010, the arrangement for school of the children pending the trial and determination of the divorce suit by hastily made ordered for immediate hearing of the petitioner's evidence on the same day. (sic)

PARTICULARS OF THE GROUND

1. Once an application is submitted before the court for determination, the court is bound to make findings or pronouncement in respect of same. (sic)
2. The Honourable trial Judge did not in the Ruling of the 13th day of September, 2010 make any pronouncement in respect of the access of the respondent to children of the marriage or the school of children when the children are even supposed to resume from school the same day. (sic)

3. The failure of the trial judge to make specific findings to the particulars above is fatal and unfounded in law and moral. (sic)

3. GROUND THREE

The Ruling of the Honourable Judge of the 13th day of September, 2010 is against of the weight of evidence before the trial court. (sic)

PARTICULARS OF THE GROUND

1. Considering the fact that case suit No. 515/2010 was initiated at the Registry of the Area Court, Grade 1, No.2, Centre Igboro, Ilorin, on the 9/8/2010, the respondent through this counsel appeared in the court for the 1st time on 13/09/2010 and the court insisted to go with the hearing of the divorce suit the same day. (sic)
2. The evidence before the court does not justify the ruling. (sic)

4. GROUND FOUR

The Learned trial judge misdirected himself in law and infact when he held that the oral application being made by the counsel is not sufficient to convince the court that the processes of the court were not personally served on the defendant but that same was pasted on the way of the defendant's house instead of asking the bailiff of the court the mode and manner of the service in the open court.

PARTICUALRS OF THE GROUND

1. The learned court did not debunk the assertion of the defendant that there was no order for services by substituted means. (sic)
2. The learned trial judge having held that the court is a court of substantial justice acted contrary to the principle by refusing to call on the court bailiff who is to confirm the mode of

service, dear the air and enables the court to make the appropriate order. (sic)

3. The interest of justice demands that the court should resolve the issue of the oral application by making findings and not to open a wide gate for technicality.

   More grounds of appeal will be filed on the receipt of the records of proceedings.

   RELIEF (S) SOUGHT: setting aside the decision and order transfer of the case. (sic)

When the case came up on the 27th October, 2010 for hearing the counsel to the respondent, A.S. Akintola Esq. submitted that he intended to raise preliminary objection to the appeal. To him that was because the petitioner had withdrawn the case at the trial court and that the trial court had subsequently struck out the matter on 4th October, 2010. He went further to narrate that it was their anticipation that the learned counsel to appellant would have intimated the court with the new development. He opined that since the respondent had withdrawn the case at the lower court, this appeal would also be withdrawn.

The counsel to the respondent went further to state that continuation of this proceeding would amount to mere academic exercise since the original matter had been withdrawn. He explained further that going on with the case would amount to abuse of court process since the respondent had informed the lower court that she was no longer interested in the case. He finally submitted that this honourable court was an appellant court and if any party had any grievances, it would be ventilated at the trial court. He therefore urged the Court to strike out the appeal.

In his reply, AbdulKarim, Esq. submitted that he objected to the preliminary objection and prayed the court to throw the

preliminary objection to the dust bin of irrelevance. He further submitted that the preliminary objection was against the principles of Islamic law and procedure. He further stated that he was aware of the principle that he who initiated an action had the capacity to withdraw same, but this rule, to him, was not an absolute rule. According to him, the withdrawal in this type of suit must be:

1. Done in good faith and not out of malice.
2. The withdrawal should not be done to perverse course of Justice.
3. The judge who decided to strike out such matter should exercise his discretion judicially and judiciously.
4. Such judge should be legally competent to adjudicated in respect of the matter before him to make such order of striking out.

The learned counsel therefore submitted that the withdrawal of the Suit No 515/2010 before Grade 1 Center Igboro Ilorin on the 4th October, 2010 was done **Malafide**, thus not in good faith. To him the withdrawal was done to frustrate the appeal; before this honourable court which had been initiated and registered. The learned counsel in his explanation said that his appeal before this honourable court was against the ruling of 13th September, 2010. He stated that the pending appeal was filed on 22nd September, 2010 but to his dismay, the trial court sat again on the same case on 4th October, 2010 and it was during that sitting that the respondent came with the notice of discontinuance of the matter. The learned counsel emphasized that the trial judge before the sitting in controversy had been transferred from that court to another jurisdiction. According to him the transfer took effect on 30th September, 2010 and despite the official transfer of the trial judge he sat on 4th October, 2010 and despite the fact that he was aware of the pending appeal.

The learned counsel further argued that there was no any material fact to indicate that the preliminary objection had merit. The learned counsel further informed the court that he had equally filed an appeal against the sitting and the ruling of the 4th October, 2010 by the trial judge in the appeal yet to be listed: Appeal No KWS/SCA/CV/AP/IL/19/2010. Finally, the issue of preliminary objection was not known to counsel to this honourable court at this stage of the proceeding. To him, the learned counsel to the respondent should have allowed him to conclude his complaint before reacting to the complaint. He therefore urged the court to over-rule the objection. He then urged the court to allow him to continue with the hearing of the appeal.

In his reply, A.S. Akintola Esq. submitted that an interlocutory appeal, under Islamic law, could not operate as stay of proceeding when it was clear that the decision of the appellate court would not affect the substantive case before the trial court, particularly when the issue raised in the appeal was the issue of technicalities and the trial court was a court of substantial Justice.

The learned counsel to the respondent emphasized that on the sitting of the trial court on the 4th October, 2010, there was no issue raised as regards the transfer of the trial judge on that day. He therefore urged the court to uphold the preliminary objection. The court finally adjourned the case to 15th November, 2010.

On the adjourned day when the case came up for hearing the appellant said he was ready and the counsel for the respondent said he too was ready and later called our attention to the fact that he had just received the Record of proceedings and needed time to go through it and as such he sought for a short adjournment.

The court then ruled thus:-

"The record showed that all the court processes were

received by the respondent since 24/11/2010.

In opening the case, AbdulKarim Esq. said that the pending appeal was sequel to the ruling of the learned trial court judge of Area Court Grade 1 No. 2 Centre Igboro, Ilorin which are handed down on the 13th September, 2010. According to him, it was as a result of discontentment of the appellant that brought about the pending appeal. He further submitted that the appellant had filed four grounds of Appeal and that each of these grounds had its particulars. The learned counsel further formulated four issues for determination.

Issue I:

When the trial court was not wrong for having refused the parties to reach amicable reconciliation notwithstanding the sacred position of reconciliation as against litigation under Islamic law.

Issue II:

Whether it is not the duty of adjudicator to make pronouncement in respect of all the issues submitted to him.

Issue III:

Whether it is a must for the applicant to challenge the mode of service or propriety of service to file affidavit to contest the service and the court can not investigate same.

Issue IV:

Whether the decision of the trial court will be justified considering the facts of the case and its circumstances.

In his argument he submitted that he would argue issues I and II together. In order to support his argument he quoted **Tuhfa** where the author is reported to have said:-

> "*the ingredients that are indispensable for valid decision and that the absence of them renders it invalid are as follows:-*

1. The Judge
2. The Plaintiff
3. The Defendant
4. The subject matter
5. The applicable law
6. The procedure

In this respect he referred the court to the Islamic Law practice and procedure in Nigeria Courts.

He submitted that these principles gave credence to Quran 2 verse 228, especially 5 and 6 to the effect that any law that would lead to decision should be part of what make a valid decision. He further elaborated that Islamic Laws vary in accordance with various causes of action. He submitted that what is applicable to the law is also applicable to the procedure. He expantiated further that the procedure to be followed in inheritance case would not be the same with the one to be followed in divorce or land matters. According to him, that was the reason why the Holy Quran directs the judge to investigate each case. He further submitted that all the said procedures should be followed intoto. He emphasized that on matters relating to divorce a judge is bound to give room for reconciliation failure of which could lead to separation of the spouses. He further referred the court to the provision of the Holy Quran which stipulates thus:

> *"And if a woman fears ill-treatment or indifference from her*

husband, it shall be no sin for them that they be suitably reconciled to each other; and reconciliation is best".

To support his stand, he quoted the Prophet tradition where the Prophet reported to have said.

"Reconciliation is permissible among Muslims except the reconciliation that makes unlawful what is lawful and lawful what is unlawful".

Based on the above quoted verses and Prophetic tradition, the counsel to the appellant wondered why the trial court should shut the door for reconciliations since it had been established in both the Holy Quran and the Tradition of the Prophet (SAW) that in case of divorce a reconciliation should come first before any action. He said that instead of the trial court adjourning the case as sought by the appellant for reconciliation he ruled that the adjournment sought by the respondent could not succeed because it was a pure case of maltreatment and ordered that the Respondent should go ahead to prove her case. The counsel to the Appellant maintained that the attitude of the trial court could not be justified in view of the Quranic and Prophetic provisions mentioned above. The counsel further explained that parties were not given the benefit of doubt. To him, the attitude of the trial court was tantamount to closing the door to settlement, which, in other words, meant that the trial court had forbidden what Allah (SWT) made lawful and made what is unlawful lawful.

On this issued, he urged the court to set aside the decision of the trial court and hold that the trial court was wrong to have refused granting adjournment in the circumstance of this case. He finally submitted that the decision of the trial court could not be justified even under Order II Rule II (2) of the Area Court Procedure 1971.

On issues III and IV he submitted that an affidavit could not stand alone. He emphasized that it had to be substantiated with

proof. On this, he referred the court to the Sharia Court of Appeal Annual Report (1998) page 99 paragraph I, WUSA AUDU VS AUDU NDAGI that the cited case had bearing on the position of affidavit and adjournment as against the provision of the Islamic Law where oral evidence is always preferred and accepted above affidavit. He further submitted that the defendant before the trial court made allegation that the process of the court was pasted on his house instead of serving him personally. He explained that instead of the trial court to verify the mode of service by the Bailiff or demand for proof of service from the Bailiff the trial court just ignored the issue of service and proceeded to hear the case.

Instead of the above procedure, the trial court went to the conclusion at page 3 of record of proceedings lines 8 – 14. He therefore referred the court to order 3 Rules 1 – 9 for guidance. He submitted further that there was no evidence in the record of proceedings for an order made by the trial court that the summons be served through substituted means. When the appellant confronted the court at P. 1 of the record of proceedings paragraphs 3 lines 11- 15 that the respondent had not seen the substituted order to the court, he submitted that inspite of this; the trial court did not deem it fit in his ruling at pp 2 – 4 of the Record of Proceedings to explain to the parties involved and the generality of people in the court that such a substituted order did exist. The court also did not invite the bailiff to say orally the mode he adopted in serving the process. He further emphasized that this approach was against the tripartite rule of justice and contrary to the Islamic law principles.

He urged the court to hold that procedure adopted by the trial court was erroneous and could not be supported with the available evidence before the court.

In his final submission the counsel to the appellant urged the court to set aside the decision of the trial court and allow the appeal.

In his response to issue one raised by the appellant counsel, the learned counsel to the respondent submitted that the issue of granting adjournment is entirely revolved on the discretion of the Court. He went further to say that it was elementary that when adjournment is sought, the granting or refusal should be exercised judicially and judiciously. He stated that this was the aim the case of the respondent and the trial court, when the counsel for the appellant sought for an adjournment to pave way for an amicable settlement, though it was the contention of the respondent before the trial court that she had sought for divorce of the appellant before then on three various occasions.

The learned counsel then referred the court to page 2 of the record of proceedings, paragraph 2 lines 17 – 23. He further elaborated that it was crystal clear from the enumerated lines that the dear life of the respondent was in conspicuous danger. To him, when the trial court observed the desperate situation of the respondent. The learned counsel further emphasized that life has no duplicate.

According to him, he lamented that the issue of threat to life had been settled under the tradition of Prophet Muhammad (SAW) that when there is threat to life the recipient should tread softy in the case where there is threat to life of a Muslim by an Idol worshipper. To him, he submitted that the Prophet (SAW) encouraged the believer to accept whatever might be the demand of the non believers when the issue of threat to life arises.

In illustrating this, he said that for instance in a case where there was a threat by an idol worshiper to kill a Muslim, the Prophet (SAW) enjoined Muslim to succumb to anything he was mandated to do by the non-Muslim in order to save his dear life. He submitted that in the view of the foregoing the trial court, found as fact that the

respondent was indeed experiencing a threat to her dear life and he refused to grant the adjournment.

The learned counsel Ahmad Esq went further to say that when submission to refuse adjournment was made by the respondent before the trial court there was no reaction whatsoever in the form of counter reaction by the appellant's counsel. According to him that was presumed to be admission of fact by the appellant counsel. He referred the court to Quran 17 verse 33 and said that the contention of the trial court was to guide jealously the threat to life of the respondent i.e. to protect dear life of the respondent from being destroyed.

On his reaction to the submission of the learned counsel to the appellant in respect of issue two, the counsel Ahmad Esq. maintained that it was trite in law that the Court should not go into a substantive issue when an interlocutory application was before it. He submitted that if the trial court conversed on the issue of Custody that according to him would be tantamount to treating the substantive matter in the case.

The learned counsel went further to say that it was not mandatory on the Court to pronounce on any interlocutory application before it which had bearing on the substantive case before it. On the issue of service of process which bothered on issues 3 and 4, the learned counsel submitted that the provision of section 61 of the Area Court Law had provided the channel of softening the issue of technicalities associated with service of court process.

In that regard, the trial Court had utilized the law rightly when he ruled that what the court was required to do was substantial justice to the parties before it. He submitted that at any event the essence of service was to bring to the notice of the other party that there was a suit against him. According to him, the fact that the

counsel to the appellant appeared before the court he was deemed to have been estoppelsled by the argument for defective service. He submitted further that having been informed by the appellant himself portrayed that he was aware of the case against him. The learned counsel further submitted that, that was the effect of Section 61 of Area Court Law. He then referred the court to the case of TITILAYO ALAKE VS MALL YUSUF AROWOLE (2006) Sharia Court of Appeal Annual Report page 139 at pp 42 – 44.

On the second leg of his submission, urged the court to dismiss the appeal for lack of diligent prosecution. He further submitted that the appellant in the prosecution of the appeal did not furnish the court with all the records that would avail the court to know what really occurred before the trial court. Based on the above the learned counsel AHMAD ESQ submitted that the pending appeals was frivolous which aimed at frustrating the respondent from seeking divorce.

He further submitted that the evidence at page 3, the last paragraph and page 4 of the record of proceedings indicated that the appellant intended to frustrate the respondent. He then referred the court to Sharia Court of Appeal Report (1994) page 216 and at 219 second to the last paragraph which had the case some bearing on AREMU VS BABA TAPA.

He finally submitted that Order 3 Rule 1 – 9 of the Area Court Civil Procedure Rules 1971 was not apposite and should be discountenanced. He therefore, urged the court to dismiss the pending appeal in its entirely for want of diligent prosecution and as a plan to frustrate the expeditious determination of the respondent's suit as reflected from the relief sought by the appellant in the notice of appeal.

In his response on law and facts S.O. AbdulKarim Esq. urged the court not to be carried away by the sentiments of the learned

counsel to the respondent in which he asserted that the motive of the appeal was to frustrate his client. This statement of his was only an opinion or suspicion. To him no person could directly read the mind of his fellow being.

On section 61 of the Area Court Law, he enjoined the court not to be moved by the sentiment cited, as well as the case of TITILAYO by the learned counsel to the respondent. He then urged the court to read section 61 of the Area Court Law in consonance with Order 3 Rules 1 – 9 of the Area Court Rules 1971. To him, reading section 61 of the law in isolation of the rule 1 cited would make nonsense of the law. And he went further to emphasize that the appeal at hand was far from technicality.

In his expatiation on the tradition of the Prophet Mohammed (S.A.W) cited by the counsel to the respondent on threat by a non-Muslim to a Muslim he stated that this was not in line with the situation of this case because the parties involved in this case were Muslims. According to him the general rule which allowed silence in admission was not at all applicable in this case, because the trial court did not give them any opportunity to say anything.

The learned counsel to the appellant maintained that in a doubtful situation a judge should have adjourned the case and that was the path of honour rather than continue with the case. He lamented that it was at that stage that the trial judge should have asked the parties to go and settle their differences by consulting with some learned personalities as arbitrators who would later return to the court to show the reality of the situation.

The learned counsel in his submission confirmed that it was true that in any interlocutory matter, the general rule was that the court would not go into substantive issues in the suit before it. But according to him, the general rule did not prevent it from making

pronouncement on the issue of education of the children of the marriage.

On the prophet tradition, he submitted that the cited tradition was not apposite in the case at hand because, according to him, it would have been premature and prejudicial for the trial court to have been convinced without proof to conclude that the respondent was truly under threat and had to run from a reality of the law.

Finally he submitted that on non-diligent prosecution, he maintained that, that argument was not right.

We have painstakingly, thoroughly, and meticulously perused the processes filed and placed before us and listened attentively to the submissions of both counsels against the background of the trial court's record of proceedings.

We arrived at the conclusion that the matter before us is centered around dissolution of marriage between the appellant and respondent based on maltreatment. The statement of the respondent before the trial court goes thus:

> " *I sue my husband the defendant for divorce and custody of the two female children. My living with the defendant is a threat to my life". See page 1 record of proceedings, lines 17 – 19.*

Now that the heart of the matter had been established we would now look at the issues formulated by the appellant for determination.

The first issue is whether the trial court had not done wrong for having refused the parties the opportunity to reach amicable reconciliation, considering the sacred position of reconciliation in Islamic law.

We share the view of the learned counsel to the appellant that the parties were not given the benefit of doubt which is tantamount

to closing the door to settlement. It means that the trial court had forbidden what Allah (SWT) made lawful and made what is lawful unlawful. Instead of granting the adjournment sought by the counsel to the appellant, he just said the case is a case of **Tat liqul Qadi** because of alleged cruelty which her husband had subjected her to and the efforts made in the past to resolve the issue was without any success. The trial court ought to have adjoined the case to give room for amicable solution of the marital dispute, as this avenue is in line with a Quranic provision that stipulates thus: "Arbitration is best" reconciliation is recognized by Islamic law as one of the practical avenues of dispute resolution. Under Islamic law, it is part of the primary assignment of a judge to initiate arbitration in any case of rift between the spouses that come before him Quran 4:35 stipulates thus:

"if you fear breach between them, then appoint (two) arbitrators, one from his family and the other from her's; if they both wish for peace, Allah will cause their arbiters reconciliation. Indeed Allah is Ever All-Knower, Well-Acquainted with all things.

"وإن خفتم شقاق بينهما فابعثوا حكماً من أهله وحكماً من أهلها إن يريدا إصلحا يوفق الله بينهما إن الله كان عليماً خبيرا ".

Quran 49: 11 also maintains thus:

"*Surely all believers are brothers so make peace between them"*

"إنما المؤمنون إخوة فأصلحوا بين أخويكم".

Thus, if there happens to arise a quarrel or rift between two Muslims, other Muslims are enjoined to take immediate step to bring reconciliation between them.

Prophet (SAW) is reported to have said:

"*As – sulhu is permissible between Muslims, unless it makes the lawful unlawful or makes the unlawful lawful*"

The above quotations from both Quran and Hadith of the Prophet (SAW) leave no one in doubt that Islamic law definitely supports arbitration because it is legal and permissible in Islamic law.

It is unfortunate, uncomplimentary, unjustifiable and unfair for the trial court not to address his mind to the above quoted verses of the Quran and the tradition of the Prophet (SAW). Therefore, we opined that the ruling of the trial court amounted to a grace and substantial injustice because there is no law that forbids adjournment if there are good reasons for granting same.

Even Order II Rule (2) stipulates thus:-

"*A request by party to a cause for an adjournment shall not be granted unless and except there be good reason for granting it*".

We are of the view that to explore an avenue of quenching the rift between the warring parties is reasonable enough for a trial court to have granted the adjournment sought by the counsel.

Therefore, the ruling of the trial court ran counter to the principles of reconciliation in the Quran, the prophet tradition and order II R II (2). This issue is therefore resolved in favour of the appellant.

Still on the issue of adjournment, the counsel to the respondent submitted that the trial court had discretion to accept or refuse the adjournment sought by the counsel to the appellant. But whereas in the instant case the trial court exercised its discretion on wrong principle, it is our duty to interfere. We opined that a discretion property exercised is one that takes accounts of the plaintiff's claim

to justice as well as that of defendant's claim to justice. This is what is known as legal discretion because it is exercised within the ambit of the law, and not based on the judge's witness and caprices. We opined that the instant discretion is not used judicially or judiciously. We therefore resolved this in favour of the appellant.

On issue II:

Whether it is not the duty of the adjudicator to make pronouncement in respect of all the issues submitted to him. It is trite law that the trial court should have made pronouncement in respect of all the issue raised before it, but this is premature because the court had not concluded its proceedings. We are only deciding on his ruling not the whole matter before the trial court and this is normal in every proceeding where there is argument on certain issues between the litigants which need clarification from the court. We cannot pre-empt the trial court because whatever be our presumption cannot lead us to the right conclusion. Allah says:

And Conjecture avails nothing against truth "إن الظن لايغني من الحق شيئاً"

We therefore consider that this issue is a non-issue yet.

On issue III:

Whether it is "must" for the applicant to challenge the mode of service or propriety of service, to file affidavit to contest the service and the court cannot investigate same.

There are no rules of court which do not make provision for service of process. This is because it is the only channel through which the other party will know that there is a litigation pending against him in the court. Therefore, if service of a process is necessary and if there is no proof that service of any kind was effected on the appropriate party, any judgment that emanated from

such proceedings would be rendered nullity because it is a fundamental defect.

In the instant case, the party was served with substituted service instead of being served personally. In this circumstance, the most effective remedy of the defendant is not to enter appearance and to use the non-compliance as a ground for setting aside the writ of summons. Unfortunately for the counsel to the appellant, he failed to do so and appeared to answer the claim, and his appearance amounted to a waiver, thus he has waived his legal right.

In view of the foregoing, we are in agreement with the submission of the counsel to the respondent that the appellant had waived his right. We opined that it is now too late for the learned counsel to the appellant to raise the objection. Above all, section 61 of the Area Court Rules emphasized substantial justice without undue regard to technicalities because the object of any court is to decide the rights of the parties and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights without undue regard to technicalities. We therefore, resolve the instant issue in favour of the respondent.

On issue four, the learned counsel to the appellant formulated the following for determination:- whether the decision of the trial court will be justified considering the facts of the case and its circumstances.

We opined that the trial judge had not utilized the law rightly as asserted by the counsel to the respondent because there is no substantial justice in his ruling. Rather than follow the right procedure, he derailed and took a hasty decision.

However, we are in total agreement with the submission of the counsel to the appellant that the action of the trial court was hasty, because going through the record of proceedings in the trial court, there was no place where the respondent proved her allegation and

under both common and Islamic law the burden of proof lies on the person who asserts. This is because Prophet (SAW) is reported to have said:

"The burden of proof lies on the person who asserts"

البينة على المدعي .

In the instant case, the respondent had not shifted the burden placed on her before the court ruled that it refused the adjournment because the case was a case of maltreatment. The trial court ought to have ascertained or investigated the issue thoroughly before coming to conclusion. This is the provision of Islamic law as reflected in the Quran 49 – 6 where Allah says:

"O ye who believe! if an unrighteous person brings you any new, investigate fully, lest you harm a people in ignorance….."

"يأيها الذين آمنوا إن جآءكم فاسق بنباءٍ فتبينوا أن تصيبوا قوماً بجهالـة" .

Thus no ready credence should be given to assertion, without being fully examined, tested and its correctness ascertained before any action is taken upon it. Thus certainty is paramount before any judgment is passed. Therefore it is trite in Islamic law that any ruling or passing of any judgment, a judge must thoroughly examine the evidences before him. In the absence of none, Imam Malik stipulates that the judge should not give any judgment. The author of **Tuhfatul-Hukkam** is very firm on this: See **Tahfatul** page 14 where he states:-

"*A judge depends on evidence of witnesses in given judgment" the author went further to expatiate thus:*

القاضي يعتمد في حكمه على الشهود .

والمدعي له الشرطان تحقق الدعوى مع البيان .

"The complainant has to fulfill two crucial conditions before his complaint could be accepted".

i Such complaint should be well established.

ii The incidence should entail elaboration or illustration.

To put it clearly in the instant case like any other cases of cruelty, the burden of alleged maltreatment is on the Respondent. She had to show credible evidence that the event or the episode happened at a particular time in the presence of x,y and z. Unfortunately, when we perused the record of proceedings of the trial court, there was no evidence to establish the authenticity of maltreatment by the appellant before its ruling. This is against the principle of Islamic law. Failure to follow Islamic procedure in its proceedings is fatal.

It is therefore our view that the action of the trial court was rather presumptuous and we have no doubt that the ruling was wrong and could not stand the test of justice, because it was a miscarriage of justice which rendered ruling in controversy a nullity. There is no procedural law known to us which allows a trial court to base his ruling on conjecture or assertion of the appellant or Respondent without proof.

As a result of the foregoing, we have no hesitation in allowing the instant appeal which, we hold, is meritorious. We hereby and accordingly set aside the ruling of the trial court and in its place, we ordered for retrial **de novo**, at the same Area Court Grade I Centre Igboro Ilorin.

SGD	SGD	SGD
S.M. ABDULBAKI	S.O. MUHAMMA	A.A. IDRIS
HON. KADI	HON. KADI	HON. KADI
7/04/2011	7/04/2011	7/04/2011

(14) IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIA
IN THE SHARIA COURT OF APPEAL IN THE PATIGI JUDICIAL DIVISION
HOLDEN AT PATIGI ON (TUESDAY) 3RD APRIL, 2011

BEFORE THEIR LORDSHIPS:

A.A. IDIRS	-	HON. KADI SCA
M.O. ABDULKADIR	-	HON. KADI SCA
A.A. OWOLABI	-	HON. KADI SCA

APPEAL NO. KWS/SCA/CV/AP/PG/02/2011

BETWEEN:

MOHAMMED NDALIMAN BABOGI - APPLICANT

VS

FATI (KAKA'ARA) MOHAMMED NDALIMA - RESPONDENT

Principles

1. Jurisdiction is not a subject of speculation but a law constitutionally and statutorily provided for:
2. Every Kadi must have a separate jurisdiction but Imam or sovereign can limit their jurisdiction in any away he pleased and either as to the district over which their power extends or as to the power of entertaining judicial proceedings.

JUDGEMENT: WRITTEN AND DELIVERED BY A.A. IDRIS

The Respondent / Plaintiff, Fati (Kaka Ara) sued her father Mall. Mohammed Ndalima Babogi the appellant before the Upper Sharia Court Katcha Niger State in case No: 23/CV1/2011 on the 14th January, 2011. The respondent sought the trial court to assist her conduct her marriage with a man of her choice.

When the case came up for hearing on the 17th January, 2011 the appellant was absent and at about seventeen minutes after twelve,

the trial judge inspected the court processes sent to the appellants, signed on it and gave judgment in favour of the respondent.

Dissatisfied, the Appellant Mohammed Ndalima Babogi appealed to this Honourable court on the 16th February, 2011 and filed four grounds of Appeal. They are as follows:-

(1) That, decision of the trial upper Sharia court Katcha, Niger State is unreasonable, unwarranted and cannot be supported due to the weight of evidence adduce before it (Sic).

(2) That the trial court, Katcha lacked jurisdiction over the matter before it, because both of us, i.e. (Appellant and Respondent) were brought up and residing at Babogi village via pada in Patigi Local Government of Area of Kwara State. (Sic)

(3) That the trial court Katcha misdirected itself by the contracted marriage of my daughter i.e. (Respondent) in the absents against my wish. (Sic)

(4) That, I pray this Honourable Court to nullify the decision of the trial court Katcha Niger State and more grounds of Appeal may be filed later. (Sic)

However, when the case came up for hearing before this Honoruable court on the 19th April, 2011, the Appellant Mal.. Mohammed Ndalima Babogi was absent, but wrote a letter of authority dated 18th Apri, 2011, praying the court to allow one Mall. Husain Mohammed Babogi stands in for him as his representative, because of his poor health condition. Fati Kaka Ara was represented by a learned counsel Kolo Makama Esq. The letter of authority was shown to the learned counsel for his reaction, but submitted that he had no objection and the letter under discussion as accepted and marked exhibit ‘A’ both parties then submitted that they were ready for their submissions.

In commencing the instant Appeal, Mall. Hussain Mohammed who was representing the Appellant said Fati Kaka Ara was born and bred in Babogi village. He went further to explain that the respondent spent all her life in Babogi. He explained further that one fateful Friday the respondent left Babogi for Katcha in Niger State and on the following Saturday a summons was sent to Ndalima from Upper Sharia Court Katcha to appear in the said court on the 17th day of February, 2011 because his daughter had sued him at Katcha Upper Sharia Court for not allowing her to marry a man of her choice.

He further submitted that as earlier stipulated in the court process sent to them, Mall. Mohammed the appellant and himself left for Katcha on the 17th of February, 2011, but on their way their motorcycle developed mechanical fault which caused their lateness to the court premises and on getting to the trial court premises they were told that the case had been decided upon and that the marriage between the respondent Fati (Kaka Ara) and one Ibrahim has been solemnized by the trial court.

In his reaction, immediately they heard this they left Katcha for their village (Babogi), because they were aggrieved with the judgment of the trial court. And as a result of this episode, he appealed to this Honourable court for a redress and urged the court to nullify the decision of the trial court. To him, that would enable the respondent to come back to their village to meet her parents. He concluded that he prayed this court to allow justice to take its normal course.

In his brief response, the learned counsel to the respondent submitted that they were served with court processes and grounds of appeal dated 16th April 2011. In his submission he stated that the decision of the lower court which the appellant was challenging emanated from Upper Sharia Court Katcha. He also stated that the

judgment was handed down on the 17th January, 2011, and that they were equally served with the record of proceedings.

He further submitted that from the face of the record, upper Sharia Court Katcha had no jurisdiction to entertain the suit that emanated from any part of Kwara State, likewise he stated that where a decision of a court like the Upper Sharia Court Katcha is handed down or delivered, whosoever was aggrieved should appeal to the Sharia Court of Appeal in Niger State, where the decision of the Upper Sharia Court Katcha would be appealable. This is because there were different laws governing the court of a state. To crown it all, he finally submitted that this Honourable court had no jurisdiction to entertain the instant appeal and urged us to strike out the appeal for want of jurisdiction.

We have gone through the trial court record of proceedings and listened most painstakingly to the respective submissions of both the representative of the appellant and the learned counsel for the respondent before us. Also we have seriously reviewed both the trial court's record and their respective submissions before us. We suggest that the central issue to be determined in this appeal is whether this court is competent to entertain this appeal because of the jurisdiction of the trial court that commenced the suit. This is because jurisdiction is not a subject of speculation rather it is a matter of strict and hard law donated by the constitution and the statutes.

Jurisdiction or competence of a court is predicated upon the fulfillment of any condition precedent to the exercise of jurisdiction.

It is pertinent to note that the rights to appeal in any court in this country are the creation of statutory provision and statutes and in occasion where the statute that creates a court lays down certain conditions on the fulfillment of which the court can only assume

jurisdiction in a given situation then unless these conditions are fulfilled, there cause no rights of appeal.

Similarly, His Lordship, Mohammed Bello, CJN of the blessed memory stated this in the case of Uti vs Onoyiwe while describing the role of jurisdiction in adjudication:-

> *"Moreover, jurisdiction is blood that givens life to the survival of an action in a court of law and without jurisdiction the action will be like an animal that has been drained off its blood. It will ceace to have life and any attempt to resuscitate it without infusing blood into it would be an abortive exercise" See (191) 1 SCNJ 25 at 49*

Summarily, jurisdiction is to a court what a door is to a house. That is the reason why jurisdiction is termed as a threshold issue, because it is the ground of the main channel to the temple of justice. In order to obtain access to the temple of justice to ventilate one's grievance, an intending litigant must show that he does not only possess a genuine cause, but he should also ensure that he lays his complaint before a competent court.

As a result of the above, if there is want of jurisdiction the proceedings there after however well conducted are a nullity. Therefore, a court is not only entitled but also bound to put an end to such a proceeding because it is the power and authority of a court to hear and determine a judicial proceedings and power to render particular judgment that are in question.

Having said this much, we would now go back to the heart of the matter which is the competence of a court to entertain a suit. In solving this problem, there are two fundamental issues which must come into play before a court can have power to assume a jurisdiction of a case before it. Firstly, the legal capacity, the power and authority of court to hear and determine a judicial proceeding.

Secondly, the geographical area in which and over which the legal jurisdiction of court can be exercised. This area of authority is called the area of geographical jurisdiction or venue. Both are important when one is considering the concept of jurisdiction. And both must co-exist in any particular case to complete the circuit of jurisdiction.

The above is not new in the history of Islamic Law. It has been acknowledged from time immemorial, as a valid instrument of Islamic law jurisprudence that before a court can assume jurisdiction it must see to the existence of the above mentioned instruments.

For clarity see Malik Law by F.H. Ruxton p. 277 where he stipulates thus:-

> "*Every Kadi must have a separate jurisdiction but Imam or sovereign can limit their jurisdiction in any way he pleases and either as to the district over which their power extends or as to the power of entertaining judicial proceedings…..*

We observed from the trial court's record of proceedings that the suit was heard and determined by a trial court outside the state. Inspite of the fact that Section 5 of law of Niger State Sharia (Administration of Justice) law 2001 that established it conspicuously maintains thus:-

> *"The Grand Kadi may at any time suspend, cancel or vary the warrant establishing or specify the area within which the powers of Sharia Court may be exercise provided that no warrant shall confer jurisdiction of a Sharia Court beyond the local government where the Sharia Court is located."*

The above goes to show that no Shariah Court in Niger State has the right to adjudicate beyond the above rule and regulation of the statute that brought it into existence.

Coming to the issue of competency of this court to hear this appeal it is necessary for us to consider the power of this honourable court which has been properly raised by the learned counsel to the respondent. A court is only competent as we have early observed that:

- The subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction, and;
- The cause should come before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.

A court is therefore said to be competent to adjudicate in a matter when, among other considerations matter is within its jurisdiction and there is no feature in case which prevents a court from exercising its legal power.

In the instant Appeal, the subject matter of the case is within the jurisdiction of the court but there is feature in the case which serves as impediment and this has bearing on the territorial jurisdiction because the instant suit emanated from a neighboring state. As such this court would have no legal capacity to adjudicate over such matter.

Section 277 (1) of the constitution of Federal Republic of Nigeria stipulates thus:-

The Sharia court of Appeal of state shall, in addition to such other jurisdiction as may be conferred upon it by the law of the state, exercise such appellant and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law which the

court is competent to decide in accordance with the provision of subsection 2 of this section….

The bald fact that it is House of Assembly that provides for extra jurisdiction under section 277 to the Sharia Court of Appeal serves as impediment for Sharia Court of Appeal to have any jurisdiction on a case that emanated from other states. This is because of judge in one state has no jurisdiction to decide a case from another states, because each state is governed by different laws though this is not applicable to supreme court because by the virtue of section 232 and 233 of the constitution of 1999 of Federal Republic of Nigeria it has no territorial in cumbrances as the entire country is its territorial jurisdiction.

Therefore, it is trite law that each state of the federation shall be seize to hear and determine suit that occurred within the territorial area of each state. For this singular reason, since the instant case commenced from Katcha Local Government Area of Niger State by virtue of section1 2 of Niger State Sharia (administration of justice) law 2001 we feel that the Niger State Sharia Court of Appeal is the only court that has the appellate jurisdiction to hear and determine any dispute between the parties with regards to this appeal. And if this court takes it upon itself to exercise a jurisdiction that does not possess, its decision would amount to nothing because it is not conferred with the jurisdiction to entertain such suit.

In view of the above, we have no alternative but to agree with the submission of the learned counsel for the respondent that we do not have jurisdiction to entertain and determine this instant appeal, because it involves issue of territorial jurisdiction, and we so hold.

We therefore strike out this appeal for want of jurisdiction, and we urge the appellant to file his appeal at the appropriate appellate court.

Appeal fails.

SGD	**SGD**	**SGD**
A. A. OWOLABI	A.A. IDIRS	M.O. ABDULKADIR
Hon Kadi	Hon Kadi	Hon Kadi
3/5/2011	3/5/2011	3/5/2011

(15) IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIA
IN THE SHARIA COURT OF APPEAL OF LAFIAGI JUDICIAL DIVISION
HOLDEN AT SHARE ON WEDNESDAY 4th DAY OF MAY, 2011
YAOMUL ARBIAU 1ST JUMADA THANNI 1432 AH

BEFORE THEIR LORDSHIPS:

S. O. MUHAMMAD - HON. KADI.
S. M. ABDULBAKI - HON. KADI.
M. O. ABDULKADIR - HON. KADI.

MOTION NO. KWS/SCA/CV/M/LF/02/2011.

AISHETU ABDULLAHI - APPELLANT/APPLICANT

VS

ABDULLAHI JIBRIL DAMA - RESPONDENT

principle:

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

RULING: WRITTEN AND DELIVERED BY S. O. MUHAMMAD

The applicant, Aishetu Abdullahi filed a motion on Notice against the frausted case at Area Court 1, Shonga in a case No 87/09 which he filed since 29/9/2009. The respondent herein is Abdullahi Jibril Dama.

That on the 4th day of May, 2011 when the motion came up for hearing the parties present. Joseph Oboite Esq. appear for the appellant/applicant while A. H. Sulu Gambari Esq. appear for the respondent.

Oboite Esq.: There are 2 different applications before the court. The first one dated 23/2/2011 and filed same day. The second application is dated 25/3/2011 and filed on 28/3/2011.

The first application is praying this court to transfer Shonga case No. 87/09 to another court of competent jurisdiction and that this court should order accelerated hearing and for further orders of this court.

We hereby apply to withdraw the motion.

A. H. Sulu Gambari Esq.: No objection but we wish to ask for cost. We filed papers for counter affidavit and transport cost from Ilorin to Share, we ask N5,000.00

Oboite Esq.: I urge the court not to award any cost. Although, cost follows events. Award of cost should not be done as a means of punishment. Besides the counsel had filed counter affidavit. We are not conceding anything because we are still on the same issue. We have another motion to contend with. To award any cost now will be premature. I urge the court to allow parties to bear their cost.

Gambari Esq.: The reasons given are not tenable. The withdrawal is putting an end to that motion without allowing the court to decide the application on merit. Since they have discovered that the application is frivolous, they have to pay cost for bringing us to court for frivolity.

RULING:

We agree that the respondent's counsel is entitled to cost for all the reasons he stated. However, we also believe that cost award should not be punitive. In view of this we hereby award only N1,000.00 cost in favour of the respondent. The 1st application is hereby struck out accordingly.

SGD	**SGD**	**SGD**
M. O. ABDULKADIR	**S.O. MUHAMMAD**	**S.M. ABDULBAKI**
HON. KADI,	HON. KADI,	HON. KADI,
4/5/2011	4/5/2011	4/5/2011

(16) 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 FRIDAY 6TH MAY 2011

BEFORE THEIR LORDSHIPS:

I.A. HAROON - HON. GRAND KADI
A.A. IDRIS - HON. KADI
A.A. OWOLABI - HON. KADI

MOTION NO. KWS/SCA/CV/M/IL/05/2011

BETWEEN

MR. ABDULHAMMED GBIGBADUA - APPELLANT

AND

MRS. FALILAT IMAM IBRAHIM - RESPONDENT

Principles:

1. There shall be no restraining order against any party merely on the basis of the claim made by the other party, until the applicant establishes strong basis that calls for it.
2. The mode of order of stay to be made differs in accordance with the nature of the thing to be stayed, the res, subject matter.
3. Injunctive orders of restraint or stay are made in respect of subject matters that are liable to changes and diminution/extinction.
4. Where preservation of the respondent cannot be guaranteed, injunctive order of restraint/stay would be made.
5. Perishable items may be stayed up to the time within which they may not perish.
6. Judgement (made on claims) without execution is of no benefit.

7. Reconciliation may be ordered by the judge where the matter before the court is complex and complicated with no settled law or fact otherwise, there shall be no reconciliation after courts decision by the same judge having heard and decided the matter on its merit.

STATUES/BOOKS REFERRED TO:

1. **Riyadu Solihin** P 161
2. **Muntahabul-Hadith** P.74
3. **Al-Bahjah** Vol. 1 P. 123.
4. **Fathul –Al-Malik** Vol. 1 P. 179, **Tabsiratul – Hukam** by ibn Far'un Vol. 1 P. 152.
5. **Ihkamul – Ahkam** P. 25
6. **Al-Mudawanatul – Kubura** Vol. 5 P. 2251.
7. **Mayyarah** Vol. 1 P 130.
9. **Nassariyatul –Fi Hukum Al-Qadai fi-shariat Wal- Qanun** by Abdul Nasir Musa Abdul –Basal. P. 418.
10. **Nassariyatul – Fi Hukum Al-Qadai Fi - Shariat Wal-Qanun** by Abdul Nasir Musa Abdul –Basal. P. 344.

RULING: WRITTEN AND DELIVERED BY I.A. HAROON

The applicant, Mr. AbdulHammed Gbigbadua by way of Motion on Notice dated 17th March 2011 and filed on the 18th March 2011, filed the instant application with Mrs. Falilat Imam Ibrahim as respondent. The genesis of this instant application was a court action instituted by the respondent who sued Mr. AbdulHammed Gigbadua to claim the custody and maintenance of the two children of their severed marriage at the Area Court I, No. I, Centre Igboro, Ilorin in Suit No. 422/2008 and Case No. 39 decided on 11/3/2008.

The court after hearing the matter and considered all the relevant court processes awarded the custody of the two children; Husnat AbdulHammed (5yrs) and Aishat AbdulHammed (3yrs) to the plaintiff; herein the respondent. The court also ordered the then defendant; AbdulHammed Gbigbadua, the applicant to be paying #3,000.00 on each child as maintenance allowance and be responsible for their education, health, utility and the general care. The applicant was aggrieved with this verdict of the trial Area Court and thus appealed to our court to seek for a redress.

This decision of the trial court came to our court on appeal in **Appeal No. KWS/SCA/CV/AP/IL/06/2010** decided on **27/1/2011**. At our end, after thorough perusal of all the court processes and careful evaluation of all the submissions of the learned counsel of the two parties in the appeal, we affirmed the decision of the trial court and awarded the custody of the two children in question to the mother; Falilat Imam Ibrahim, the respondent. It is this decision of the Sharia Court of Appeal that the instant application is now praying that should be stayed.

On the 12th April 2011 when this matter came up for hearing, S.A. Abdullahi, Esq. with his learned friend N.R. Mbamara, Esq. appeared for the applicant while A.J. Oyekanmi, Esq. appeared for the respondent. The applicant's counsel while moving the application dated 17th March 2011 and filed on 18th March 2011 submitted that the application was brought under the inherent power of our court. That the applicant is praying for the following orders:

1. ***AN ORDER staying execution of the judgment of this honourable court delivered on the 27th of January 2011 in this appeal pending the determination of the appeal at the Court of Appeal, Ilorin Division filed on the 17th day of February 2011 against the judgment. (sic)***

2. ***And for such further and other orders as the honourable court may deem fit to make in the circumstances.***

He said that the prayers are premised on five grounds of appeal and supported by 13-paragraphs affidavit deposed to by the applicant himself. Also there are two Exhibits attached to the application marked "A&B"; "A" being the judgment sought to be stayed by this application and "B" the Notice of Appeal filed against the said judgment at the Court of Appeal. He submitted that there are various authorities that should be put into consideration before granting an application of this nature. He referred to the Court of Appeal case: **ORIENT BANK OF NIGERIA, PLC. Vs. BILANTE INTERNATIONAL LIMITED; 1996, 5 Nigerian Weekly Law Report, part 447 at p.166, particularly p.184, paragraph C-F.** He then argued that if this instant application is refused, the very harm and mischief the application is trying to prevent will befall the subject matter in this motion. He submitted that the matter being issue that bothers on custody of the two children between the two parties, the father is duty bound to be sure that the children in question will not be miserable here and in the hereafter. He supported his argument with the hadith of the prophet (SAW):

Every person is on the path of his companion, let everyone of you be mindful of the companion he keeps	**المرء على دين خليله فليرى أحدكم من يخلل.**

He emphasized that companionship here is beyond mere friendship but also connotes parental relationship and guardianship. This, he buttressed with another hadith:

All of you are guardians (shepherd) and you shall be questioned on your guardianship	**كلكم راع وكلكم مسئول عن رعيته**

The learned counsel further argued that the refusal of this application will be a ***fait accompli*** in the Court of Appeal and render the judgment nugatory should it turn out in favour of the applicant. He rounded up his submission by praying us to either use our wisdom in reconciling between the two parties on the issue or to grant the application in order to avoid portentous irreversible damage that would be done to the respondent.

The learned counsel to the respondent in his response told us that they have 19-paragraph counter-affidavit dated and filed 8th April 2011 deposed to by the respondent herself, attached thereto is an order of the Area Court I, No. I, Centre Igboro, Ilorin for an enforcement of the judgment of the Sharia Court of Appeal dated 27/1/2011. In his submission, he prayed us to discountenance all the submissions of the applicant's counsel. He argued that it is well settled that the judgment takes effect from pronouncement, that a successful litigant must not be prevented from benefitting from the fruit of the judgment. He referred to the case of **BANK OF WEST AFRICA Vs. NIPC LTD., (1961), LLR 35;** and **OLAYINKA Vs. ILUSANMI, (1971), NWLR at 277**. He argued further that before application for stay of execution could be granted certain conditions must be put in place among which are:

i. *That there must be a pending appeal before a court of competent jurisdiction. He then submitted that there is no pending appeal regarding this matter before us. That the purported Notice of Appeal dated 28/1/2011 and served on them has no Appeal/Suit Number, not filed at the Court of Appeal or the Sharia Court of Appeal, and no Assessment Number from the Court of Appeal. He then submitted therefore that the purported Notice of Appeal is worthless and a mere invalid piece of paper of no effect. Supporting this argument, he referred to the case of Court of Appeal in* ***AKIO ABBEY & 5 OTHERS Vs. CHIEF ALHAJI***

IBRAHIM FUBARA ALEX & 2 OTHERS, (1991) NWLR, (part 198) at p.459, particularly p.477.

ii. *He further canvassed that for an application such as the instant one to be granted, the appeal in question must be arguable, cogent and of substantial points. All these are lacking in the purported appeal. He submitted that for this kind of motion to be granted, there must be an exceptional circumstance whereas the applicant herein did not depose to any special or exceptional circumstance in his affidavit. He referred to the case of* ***CENTRAL BANK OF NIGERIA Vs. K. THOMSON ORGANISATION LTD., (2002), 7NWLR, (part 765), p.139 at 156***.

iii. *He stated that it is trite that the grant of stay or refusal of an application for stay of an execution is a matter of discretion of the court. He referred to the case of* ***VASWANI TRADING CO. Vs. SAVALAKH AND CO., (1972) All NLR, (part 2) at p.483***. *He therefore submitted that the discretion must consider the competing right of the parties involved, that no party should be deprived of the fruit of his judgment without substantial reasons been established to warrant such decision. On this, he referred to the case of* ***MICHAEL O. BALOGUN Vs. D.O. BALOGUN, (1969), All NLR at 349***.

He submitted that a court is duty bound to consider the nature of the subject matter in dispute and weigh between maintaining the status quo which is the judgment already awarded and the effect of damage on the respondent. In the circumstance of this case, the subject matter is the custody of the two children in question and the judgment creditor is the mother. He affirmed that the respondent

being the mother will do anything possible to guarantee the well being of her children. He called our attention to **paragraph 16** of the counter-affidavit. He further stressed that granting this instant application will amount to injustice and it will be inequitable on the part of the respondent. That our court had a pronouncement on the subject matter and order of enforcement was made by the lower court while the applicant failed to comply with these decisions since January 2011 to date. This is a blatant contempt of court, he lamented.

The learned counsel to the applicant in his brief response to the submissions of the counsel to the respondent stated that he agreed with the counsel to the respondent in his submissions that judgment takes effect by the pronouncement of the court but argued that in the instant matter, the judgment is on hold pending the determination of the appeal in question. He reacted to issues of assessment number and said the fault was from our court and should not be visited on them, while the certification or stamping was a technical issue. He urged us to discountenance with it and stated that while the appeal number should be responsible for by the Court of Appeal, the suit number was an oversight. He finally prayed us to ignore all the authorities referred to by the counsel to the respondent and to grant the application as prayed.

Having listened to the counsel of both parties in their submissions for and against coupled with careful perusal of the court processes; it is our conclusion that the main issue before us is: ***'Whether or not the application before us deserves our favourable consideration?'*** Stay of execution is one of the well grounded procedural principles of Islamic law. It is known in Islamic law as ***at-tawqif***. Emphases are placed on certain considerations before a motion for stay of execution is granted such as fairness, equity and the conflicting interests of the parties. The applicant should not be exposed to suffer any injustice or prejudice, while the successful

party herein the respondent should not be deprived of the fruit of the judgment in reference.

In Islamic golden procedural rules, prayers for stay of execution must be properly based on cogent and convincing reasons, though it is a discretionary power of court as argued by the learned counsel to the applicant. Islamic law went ahead in its provision that it is a matter of law and practice. See ***Bahjah Vol. 1, p.123*** which reads thus:

There shall be no restraining order against any party merely on the basis of the claim made by the other party, until the applicant establishes strong basis that calls for it...	**ولا يعقل على أحد شيء بمجرد دعوى الغير فيه حتى ينضم إلى ذلك سبب يقوى الدعوى.**

See also ***Fathul Ali al-Malik, Vol. 1, p.179*** and ***Tabsirat-ul-Hukkam by Ibn Far'un, Vol. 1, p. 152.***

In our law, the subject matter or the respondent and its mode determines the decision of the court, it varies by the nature and type of the subject matter involved. See ***Ihkam-ul-Ahkam, p.25:***

The mode of order of stay to be made differs in accordance with the nature of the thing to be stayed; the res, subject matter.	**وكيفية التوقيف مختلفة باختلاف الموقوف.**

In the instant application, the learned counsel submitted that if the application is refused the respondent will suffer portentous harm, unpreventable mischief and damage. This is a mere assertion that requires a proof to establish it. On this, it is our well considered view that maintaining the status quo ante in this instant application would be more desirable considering the antecedents of this matter. This is a case that involved custody of the two children in question which was awarded to the respondent being the mother by the trial Area

Court on 11th March 2008. Our court, in the **Appeal No KWS/SCA/CV/AP/IL/06/2010** affirmed the decision of the trial court in its decision of 27th January 2011. The respondent by nature is a human being and not a perishable commodity; house or parcel of land that could be devalued, quickly destroyed or wrongly purchased, and as it had been said there was no proof of threat to the lives of the children in question. The position of Islamic law in a situation such as this is capital **NO** to any prayer of stay of execution.

Injunctive orders of restraint or stay are made in respect of subject matters that are liable to changes and dimunition/extinction. (see Al-Mudawanat-ul-Kubrah, Vol. 5, p.2251).

وإنما توقف هذه الأشياء لأنها تحول وتزول.(راجع:المدونة الكبرى، جزء5، ص2251).

See also *Mayyarah, Vol. 1, p.130:*

Where preservation of the res cannot be guaranteed, injunctive order of restraint/stay would be made.

يوقف ما لا يؤمن تغيره وزواله.

Another authority also confines the power to stay on subject matter that can quickly decay or perish as follows:

All perishable items may be stayed up to the time within which they may not perish.

وكل شيء يسرع الفساد له * وقف لا لأن يرى قد دخله**

We shared the same view with the submission of the learned counsel to the respondent that judgment takes effect by pronouncement and that a successful litigant should not be

unnecessarily barred from benefitting from the fruit of the judgment. We are strengthened by the provision of Islamic law which goes thus:

Execution 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 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: "judgment (made on claims) without execution is of no benefit". (see Nazariyyat-ul-Hukm al-Qada'i fi-sh-Shari'ah wa-l-Qanun by Abdul Nasir Musa Abul Basal, p.418)

...هو الهدف الأساسى للحكم القضائى، وبمقتضاه تعود الحقوق إلى أصحابها، وتحقق العدالة بترجمة الحكم الشرعي إلى واقع يعاش. فإذا لم يقبل الحكم التنفيذ، فإنه يعتبر فاقدا لقيمته, وفي ذلك يقول سيدنا عمر بن الخطاب - رضي الله عنه - في رسالته إلى أبي موسى الأشعرى: "فإنه لاينفع تكلم بحق لانفاذ له". (نظرية الحكم القضائي في الشريعة والقانون لعبدالناصر موسى أبو البصل، صـ 418)

The same authority goes further to say:

Execution herein means that the affected party complies with 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 والتقيد 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.

Our judicial attention is drawn to the alternative plea of the learned counsel to the applicant while rounding up his submission, urging us to reconcile between the parties for settlement. This in our view seemed to be too late, out of time and of no basis. Once a matter is heard, thoroughly assessed and decided by court no reconciliation can be said to take place again particularly before the same judge. We are bold to take this view in line with the provision of our law which reads:

In this context, reconciliation may be ordered by the judge where the matter before the court is complex and complicated with no settled law or facts. Otherwise, there shall be no reconciliation after court's decision by the same judge having heard and decided the matter on its merit. It is therefore not allowed for a judge to aid the erring party.

(see Nazariyyat-ul-Hukm al-Qada'i fi-sh-Shari'ah wa-l-Qanun by Abdul Nasir Musa Abul Basal, p.344)

وبمقتضاه أمر القاضي الخصوم بالصلح في حالة وجود اللبس والإشكال في القضية المنظورة، فالقاضى هنا لم يتكون في نفسه قرار معين يفصل به الخصومة، أما إذا نظر القاضى في الدعوى التي أمامه وسمع البينات وترجح لديه قرار معين فلا يجوز له الأمر بالصلح في هذه الحالة ؛ وذلك لأن القاضي حينئذ عرف الظالم من المظلوم والمحق من المبطل، فلا يجوز له مساعدة الظالم أو المبطل.

(راجع: نظرية الحكم القضائى في الشريعة والقانون لعبدالناصر موسى أبو البصل، صفحة 344).

It is pertinent at this junction to stress that it is trite that filing an appeal against the decision of court does not automatically stay the execution of the already decided matter. A decision of court is an accomplished conclusion arrived at after thorough assessments and considerations of all relevant court processes and submissions of the

parties involved based on law and facts. It would therefore be unreasonable to set aside the same judgment or stay its execution or render it ineffective without cogent and substantial reasons by the same judge as we enumerated above.

Most of the cases cited by the learned counsel for or against were not decided by Islamic principle and therefore may not be useful in the instant application.

In the light of all the foregone, we strongly refuse the application for stay of execution of our decision in the **Appeal No. KWS/SCA/CV/AP/IL/06/2010** decided by us on **27th January 2011**.

Application fails.

SGD	**SGD**	**SGD**
A.A. OWOLABI	**I.A. HAROON**	**A.A. IDRIS**
HON. KADI	**HON. GRAND KADI**	**HON. KADI**
06/05/2011	**06/05/2011**	**06/05/2011**

(17) 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 WEDNESDAY 18TH DAY OF MAY, 2011.

BEFORE THEIR LORDSHIPS:-

S.O. MUHAMMAD - HON. KADI.

S.M. ABDULBAKI - HON. KADI.

A.A. OWOLABI - HON. KADI.

APPEAL NO. KWS/SCA/CV/AP/LF/01/2011.

IDOWU DZARA - APPELLANT
VS.
NNAKULA IDOWU - RESPONDENT

principles:

1. It is the practice to listen to the claim and the evidence, whether the party (i.e the defendant) was present or absent.

Therefore, the outcome will be communicated to him (i.e the absent party).

2. Who assert (a claim) must prove (the claim)
3. When two parties appear before you, do not judge between them until you hear from the other party as you have heard from the first party.
4. It is obligatory on the judge to maintain absolute equality between the contenting parties with regards to the way they stand or sit down, their proximity or distance (from the judge) and how he listen (or hears) both of them.

5. VeriLy Allah commands that you should render back the trust to those whom they are due, and that you judge between men with justice.

STATUES/BOOKS REFERRED TO:

1. Order 9 rule 3 (1) of the Area Court Civil procedure Rules
2. Jawairul – Iklil Sharhu Mukhtasar Khaleel Vol. 11 P. 230 – 231
3. Fiqh Sunnah Vol. 3 P. 322
4. Ashalul – Madarik Vol. III P. 199.
5. Jawairul- Ikilil Vol. II P. 225
6. Q4 :58
7. Q5:8

JUDGEMENT: WRITTEN AND DELIVERED BY S.O. MUHAMMAD

The main focus of this appeal is fair hearing. Idowu Dzara is the appellant represented by Wahab Ismail, Esq., Nnakula Idowu represented herself as the respondent. It was the respondent who went to the Grade I Area Court, Lafiagi, to "petition for divorce on the ground of lack of love." She claimed further:

> *The defendant is my husband who married me since about ten years ago, no issue yet so now I sued him before court for divorce on the ground of lack of proper health care which led to fade my love (sic).*

The appellant sought for reconciliation and the trial court granted the application twice: on 22/10/2010 and 29/10/2010 but the reconciliation efforts failed. The appellant counsel's application to file counter claim was granted by the trial judge on 26/11/2010 and the case was adjourned to 16/12/2010. On this adjourned date,

according to P.3 of the record, it was only the plaintiff/respondent that was present. Both the appellant and his counsel were absent. The judge then invoked Order 9 Rule 3(1) of the Area Court Civil Procedure Rules and heard the respondent's claim of divorce and granted it. The trial judge said:

> *I felt necessary that the parties be separated because they are not keep to the limit of God ordained on them not to cause more harm in the day of judgment. Therefore, I hereby grant divorce for the plaintiff as prayed…(sic).*

The appellant felt aggrieved, and through his counsel, filed this instant appeal dated and filed on 14th January, 2011. The appeal was premised on three grounds as follows:

Ground 1:

> The lower court misdirected itself when it's granted the relief of the respondent by dissolving the marriage between the appellant and the respondent (sic).

Ground 2:

> The lower court erred in law when it refused the application of the appellant to cross examine the respondent (PW1) and give evidence in his own defence.

Ground 3:

The lower court erred in law and misdirected itself when it held thus:

> *……but it is clear that the paper were filed on 13/12/2010 which is to be heard on 16/12/2010 which is basically on the counter-claim of the expenses during the marriage tied and the preliminary objection based*

for the authoritative jurisdiction of this court to hear of the sum of N140,000.00 as alleged by the defendant. It is very clear in the law that this court has unlimited jurisdiction in anything connected with matrimonial causes. This is in accordance with first schedule part 2 of Area Court Civil Procedure Rules of 1967, edit No. 2 of 1967 (sic).

We heard this appeal at Lafiagi on Wednesday, 13th April, 2011. Both parties were present. Arguing the appeal, the appellant counsel submitted the following two issues for our determination:

I. Whether or not the trial judge was right in refusing the application of the appellant to give evidence and in defence of the plaintiff/respondent's claim in view of the facts and circumstances of this case.

II. Whether the trial court was right in his decision to dissolve the marriage between the two parties when there was no evidence in support.

On issue I, the learned counsel made reference to the record of proceedings particularly pages 2-5 and submitted that the trial court judge was wrong not to have allowed the appellant to argue his counter claim and his application for preliminary objection. He added that the court was also wrong to have decided on these two issues without any evidence before the court to base its decision. Furthermore, the learned counsel submitted that, although, both himself and the appellant were late to attend the court on the hearing day, but insisted that the sanction for their lateness should have been restricted to proceeding with hearing of the respondent only, and not to refuse to hear the appellant afterwards. Therefore, he submitted that the court had no cogent reason to refuse to hear the appellant's

defence, to hear his counter claim and to also hear his application for the preliminary objection. He therefore, argued that this refusal bothers on lack of fair hearing which the judge should not have treated with levity as he did in this case. The learned counsel submitted that where in any court of law – be it Islamic or common law courts – fair hearing is not respected and upheld, the decision of the lower court based on this will be set aside no matter how well the case is conducted and referred us to:

(i) Alhaji vs. Maji (2002) FWLR part 127 P.1122 at P.1135

(ii) Laoye vs.FCSC (1989) 4 SCNJ P. 146

(iii) Gbadamasi vs. Odia (1992) 6 NWLR Part 248 P. 491 at P.493

Finally on this issue, he submitted that the question of fair hearing touches on procedure in the determination of the case under reference and not in the correctness of the decision. He therefore, urged us to allow this appeal.

On issue II, the learned counsel submitted that the trial judge was wrong to have dissolved the marriage of the two parties without premising same on any evidence or reason. According to him, dissolution of marriage under Islamic law must be based on at least a reason traceable to the evidence of the plaintiff/respondent. The reason cannot be assumed or imagined by the court as was the situation in this case. He concluded by submitting that there was no where in the record of proceedings where the respondent was recorded to have called a witness to substantiate her claim of divorce on the ground of lack of proper health care. He therefore, urged us to set aside the judgment of the trial court and to grant the reliefs sought accordingly.

In her brief response, the respondent stated that they had appeared in the trial court six times adding that the learned counsel to the appellant arrived court at 2.00pm when the case was heard and determined on 16/12/2010. She added that she did not agree with the submission of the learned counsel on lack of fair hearing because, according to her, the learned counsel for the appellant was in court that day. She therefore, wanted us to allow the trial court's decision to stay.

Meanwhile, on his second and last chance to address us, the learned counsel for the appellant submitted that he had nothing to add to his earlier submissions.

Having listened to both parties for and against, and having read through the record of proceedings, we decided to address the following issues arising from both the appeal and from the record of proceedings:

1. Whether the trial court was right to dissolve the marriage between the two parties in the absence or due to lateness to appear in court of either of the parties.

2. Whether the trial court was right not to hear the counter claim of the appellant including hearing of his application for preliminary objection on the jurisdiction of the court to hear the case.

3. Whether marriage can be dissolved on the ground of claim only without any evidence or and witnesses to such a claim.

4. Whether giving a decision in the absence or due to lateness to court of either party is a sanction under Islamic law.

5. Whether lack of fair hearing has been established by the appellant in this case.

Meanwhile, issues I and 4 will be considered together due to their similarity after which we shall address issue 3. Both issues 2 and 5 will also be considered together for both of them too are very close in similarity.

Under Islamic law, a court of law can proceed to hear the plaintiff's case plus his evidence and witness (es) and take a decision on same in the absence of the defendant. This is the only sanction known to law. However, there is a condition to this. It must be that the absent party has been given adequate notice to appear in court but he refused to do so. The same principle applies to lateness to court of the defendant in a suit. The only right that should be accorded the absent party is to communicate the court's decision to him afterwards. This is the position of Islamic law on this issue as provided in volume II of **Jawahirul Iklil Sharhu Mukhtasar Khaleel** pages 230 and 231. The most relevant aspect of this authority to this case provides as follows:

The practice with us is to listen to the claim and the evidence, whether the party (i.e. the defendant) was present or absent. Thereafter, the outcome will be communicated to him (i.e. the absent party)

العمل عندنا أن تسمع الدعوة والبيّنة حضر الخصم أو لم يحضر ثمّ يعلم بها...(أي بالقضاء)

However, the question that arises in this instant appeal is that even with the lateness of the appellant's counsel to court on the hearing day, did the respondent lead any evidence and call any witness to substantiate her claim of divorce before the decision dissolving her marriage with the appellant took place? The answer

to this nagging question prompts our focus on issue 3 arising from this appeal (i.e. whether marriage can be dissolved on the ground of claim only without any evidence or/and witnesses to such a claim). The answer is a capital No.

Under Islamic law, whoever asserts a claim must prove it by leading evidence and even calling witnesses to prove his case. Prophet Muhammad (s.a.w) put this succinctly when he said:

Whoever asserts (a claim) must prove (the claim) البيّنة على المدّعى

Also in the authority cited earlier (**Jawahirul Iklil**), it is stated in part:

The practice with us is to listen to the claim and the evidence….. (Emphasis, ours). العمل عندنا أن تسمع الدعوى والبيّنة

Unfortunately, this salient principle is flouted in this case. The court only heard the claim of the respondent and based its judgment on that alone without asking the respondent to prove her claim of "divorce on the ground of lack of proper health care…."and, in addition, to call witnesses to substantiate the claim as provided by law. This issue is therefore resolved in favour of the appellant.

On issues 2 and 5, we observed that the appellant was not given any chance to state his own side of the case by the trial court. There is nowhere in the record of proceedings where he was accorded his right to reply to the claim of the respondent. In addition, the appellant through his counsel, applied for a counter-claim of N140,000 "being a total amount received from the defendant in connection with and during the marriage" (see paragraph 2 of the application for counter claim). This application too was overruled without allowing the appellant's counsel to argue

same. He also raised a preliminary objection on the jurisdiction of the court and also sought for transfer of the case to another Upper Area Court that had jurisdiction. The trial judge overruled the jurisdiction without allowing the learned counsel to argue same when he said at P.5 of the record of proceedings:

> *It is very clear in the law that this court has unlimited jurisdiction in anything connected with matrimonial causes (sic).*

With this development, certainly lack of fair hearing has been clearly established. In the first instance, a preliminary objection raised under Islamic law is also a claim which must be heard and determined accordingly. This same position applies to any counter-claim under Islamic law. Both parties are considered as **Mutadaayia'en**, double plaintiffs or claimant and counter claimant. The Islamic law procedure then requires that both parties should be given the opportunity of knowing the claim of the other and also afforded the opportunity of producing witnesses to prove the claim or the counter-claim as the case may be. See this court's judgment in our 1995 Annual Report p.141 at p. 147 in **Alhaji Saka and Mariamo Omo Busari Vs. Alhaji Issa Agaka** in Appeal No. **KWS/SCA/CV/AP/IL/08/95** delivered on 1st September, 1995. The trial Area Court Judge did not apply this procedure in the instant appeal before us by refusing to attend to the counter-claim of the respondent. This is wrong and we so hold. Where there are two claims pending in the trial court, the initial suit and the subsequent one, raised independently or as part of defence of adverse party – a caseof claim and counter claim has arisen. In this vein, a counter claim should be regarded and treated for all intents and purposes and in the cause of justice and as an independent action in its own right. Indeed, it is more of a sword for attack than a shield for defence. Treated as such is both logical and legal. In essence, both the claim and the counter - claim are to be tried together for convenience and

as a cost and time saving measure. The independent nature of counter claim is butressed by the point that it needs not relate to or in any way be connected/or linked to the claim of the plaintiff. Thus, it need not necessarily be of the same nature or arise from the original/substantive claim. Indeed, the defendant with a counter claim becomes or assumes the position of the plaintiff and the plaintiff in the original action/suit transforms into the defendant in respect of the counter claim. Put differently both parties swap their respective positions. Invariably, the same rules of procedure, standard and burden of proof will apply to both the claim and the counter claim. There must be satisfactory proof of either. Hence at the end of the day, both suits may each partly succeed or fail or one may succeed while the other may fail. Each case will stand or fall on its respective particular facts and given circumstances. Thus the fate or the outcome of a counter claim is not predicated upon the outcome of the plaintiff's claim. See generally, the decided case of **Garba Vs. KUR** (2003) 11 NWLR (Part 831) p. 280; **Usman Vs. Garke** (2003) 14 NWLR (Part 840) p. 261; **Musa Vs. Yusuf** (2006) 6 NWLR (Part 977) p. 454.

In this instant appeal, the trial court failed to apply this principle. And, the failure simply translates to lack of fair hearing **simplicita**. Prophet Muhammad (s.a.w) warned 'Ali Bn Abi Talib against this practice as follows:

> *O! Ali, when two parties appear before you, do not judge between them until you hear from the other party as you have heard from the first party……(**Fiqhus-Sunnah Vol. 3, P.322**)*
>
> **يا علي, إذا جلس إليك الخصمان فلا تقضي بينهما حتّى تسمع من الآخر كما سمعت من الأول……**
>
> (راجع فقه السنّة للسيّد سابق ج ٣ ص ٣٢٢)

We decided to give a few other authorities in this judgment in order to guide our brother judges applying the Islamic law

particularly at the lower courts on the need to accord fair hearing its rightful place in the dispensation of justice to all and sundry. At P. 199 in volume III of **Ashalul Madarik** written by Abubakar Hassan al-Kashnāwi, it is provided that:

A judge shall not decide a case against any party until he has listened to all claim(s) from the plaintiff. He will then ask the defendant to react to the claim(s)….

لا يحكم القاضي على أحد الخصمان حتّى يسمع تمام الدعوى من المدعى. وإذا فرغ (المدعى) سأل القاضي المدعى عليه فيما ادعى فيه خصمه من الحق.....

The principle of fair hearing entails that a hearing of a case cannot be said to be fair if any of the parties is refused a hearing or denied the opportunity to be heard, present his case or/and call his witnesses, as it occurred to the respondent in this appeal at the trial court. It is stated in **Jawahirul Iklil** (supra) vol.II, P. 225, that the judge should preserve the most absolute equality between the contending parties before a court of law. The law provides

It is obligatory on the judge to maintain absolute equality (impartiality) between the contending parties with regard to the way they stand or sit down; their proximity or distance (from the judge); and how he listens (or hears) both of them……

(وليسوّ) القاضى وجوبا (بين الخصمين) في القيام أو الجلوس والقرب أو البعد والاستماع لكلاهما.....

(راجع: جواهير الإكليل ج ٢ ص ٢٢٥)

In a similar development, Prophet Muhammad (s.a.w) was reported to have said in a **hadith** reported by Ummu Salamah:

إذ ابتلى أحدكم بالقضاء فليسوّ بين الخصمين في المجلس والإشارة والنظر..... وينبغي للقاضي أن يكون في قضائه فارغ القلب. (الحديث رواه أم سلمة) .

If any of you is saddled as a judge (you must) maintain equality between the two quarreling parties in sitting position, in gesticulation and in how you look at them both……. It is obligatory on the judge to maintain a clear and clean heart in his judgment.

From the foregoing, the attributes of fair hearing have been made very clear:

(i) That the court shall hear both sides in a case before reaching any decision and:

(ii) That the court shall give equal treatment, opportunity, and consideration to all the parties concerned.

Furthermore, fair hearing within the meaning of S. 36(I) of the 1999 constitution means that in the determination of the civil rights and obligation of an individual by a court of law, the parties involved must be given equal opportunity to be heard in respect of the matter before the court. It also means that the parties must have equal facilities or they must be placed in a position to obtain equal facilities in the trial process. A denial of the right to be heard implies a breach of constitutional right, natural justice and rules of court. See **State vs. Onagoruwa** (1992) 2 NWLR (pt. 221) at P.33.

In this instant appeal, and in view of the plethora of authorities cited under the Islamic law complemented by the 1999 constitution of the Federal Republic of Nigeria and the authorities cited by the learned counsel to the respondent (supra), we completely agree with

the learned counsel for the appellant that his client was denied fair hearing at the trial court and this certainly has resulted in miscarriage of justice and its denial. And we so hold.

We decided again to draw the attention of our brother judges at the trial courts to just two verses in the Holy Qur'ān on the need to be fair and just in the discharge of this onerous duty of adjudication. The Almighty Allah says:

Verily, Allah commands that you should render back the trusts to those to whom they are due; and that when you judge between men, you judge with justice…(Q4: 58)

" إن الله يأمركم أن تؤدّوا الأمانات إلى أهلها وإذا حكمتم بين الناس أن تحكموا بالعدل... "

(سورة النساء: ٥٨)

The Almighty Allah also admonishes as follows:

" O you who believe! Stand out firmly for Allah as just witnesses; and let not the enmity and hatred of others make you avoid justice."(Q5 : 8)

" يأيّها الذين ءامنوا كونوا قوّامين لله شهداء بالقسط ولا يجرمنكم شنئان قوم على ألاّ تعدلوا اعدلوا هو أقرب للتّقوى..." (سورة المائدة: ٨)

In conclusion, we hold strong opinion that we should set aside the decision of this trial court for lack of fair hearing thereby allowing this appeal. In view of this conviction, we hereby set aside the decision of the Grade I Area Court Lafiagi in suit No. 135/2010, case No, 121/2010 delivered on 16/12/2010 and order the sole judge learned in Islamic law at the Upper Area Court, Lafiagi to rehear the

case **denovo** following all the principles of fair hearing as spelt out in this judgment.

Appeal succeeds.

SGD	SGD	SGD
A.A. OWOLABI	**S.O. MUHAMMAD**	**S.M. ABDULBAKI**
HON KADI,	HON KADI,	HON KADI,
18/5/2011	18/5/2011	18/5/2011

(18) IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIA
IN THE SHARIA COURT OF APPEAL OF SHARE DIVISION
HOLDEN AT SHARE ON WEDSDAY 31ST DAY OF MAY, 2011.

BEFORE THEIR LORDSHIPS:

S.O. MUHAMMAD - HON. KADI

S.M. ABDULBAKI - HON. KADI

M.O. ABDULKADIR - HON. KADI

APPEAL NO.KWS\SCA/CV/AP/SH/01/2011

BETWEEN

FUNKE ABDUL-FATAI - APPELLANT

VS

ABDUL-FATAI LAWAL - RESPONDENT

principles:

1. The father should maintain his child till (he) attains the age of maturity and capable to earn a living.
2. It is mandatory on the father to maintain his children.
3. In all circumstances, his (i.e. the child) maintenance is mandatory on the father if the child has not attained the age of puberty.

STATUES/BOOKS REFERRED TO:

1. Al-Mudauwana Al-Kubrah Vol. II
2. Sirajus – Salik Vol.II p. 112.
3. Kitabul Fiahi Aial Madhahibil Arba Vol. IV

JUDGEMENT: WRITTEN AND DELIVERED BY S.O.MUHAMMAD

The main grievance in this appeal is inadequate child/ children maintenance allowance. The appellant, Funke Abdul- Fatai was the defendant at the Area court Grade 1 Share where the respondent, Abdul- Fatai sued her for divorce as a plaintiff. The appellant conceded to the claim of the respondent when she told the court in simple and clear language that "I also agree to divorce him" (see p. 1of the record of proceedings). Based on this free consent, the court entered judgement in favour of the respondent when the trial judge pronounced that "free divorce granted to the plaintiff" (see P. 2 of the record of proceedings). On the same page, the trial judge went further to hand down the following orders:

> The plaintiff shall pay the defendant the sum of #1,500
>
> As kindness money and #1,000 monthly as up-keeping
>
> for feeding the child of seven months, who also stay the
>
> defendant (sic).

The appellant felt aggrieved with these orders and filed three grounds of appeal reproduced as follows:

1. The decision of the trial Area Court 1 Share was unreasonable, unwarranted and can not be support due to the weight of evidence adduced before it (sic)
2. That, the trial Court was unfair. Unjust to me by ordering the respondent to be paying the sum of #1,000 to me as maintenance of allowance of one male child, without considered the standard of living (sic).
3. That, more grounds of appeal may be filed later (sic).

On April 4, 2011, we started to hear the appeal at our share outstation. In another simple and clear language, the appellant told us that #1,000 awarded by the trial judge for her child was inadequate. She gave the name of the child as Qudus and that as at that date we

were hearing this appeal, the child was nine (9) months old. She added that Qudus had a senior sister Mansurah, Seven (7) years old who is in primary three (3) at Muslim Primary School, Share. According to her, she pays Mansurah's school fess of #3,000 each term and even buy books for her, Specifically, She told us that she took Qudus to hospital for treatment and also bought all the prescribed drugs. Finally, she said she had all the receipts for both the school fess of Mansurah and for the drugs bought for Qudus. In view of this development, she would like us to review the maintenance allowance of #1,000 monthly for Qudus to #7,000 for the two children which she has for the respondent.

In his reply, the respondent confirmed having two children by the appellant as named above but added that he also has another wife known to the appellant. The name of the second wife was given as Bilqees who also has two children- Ruqayyah (4yrs) and Opeyemi (9 months). Opeyemi, he added is a male child. Ruqayyah, according to him is attending Community Primary School, Share where he claimed he pays #50.00 as her school fess per term.

On the appellant's statement regarding both Mansurah and Qudus, the respondent stated that the former (Mansurah) is not living with the appellant but with his own senior sister Hawwau, who, he claimed, maintain her on his behalf. Regarding payment of school fees, the respondent said that he pays the school fess but he would not know whether Mansurah is giving the receipts to her mother, the appellant.

On the latter (Qudus). The respondent stated that he was not aware of his sickness because in his own words. 'I do not visit Qudus in his mother's custody"

Furthermore. the respondent told us that he is a hired commercial motor cycle rider (Okada) He goes home with N300.00 on the average daily Out of this amount, he delivers N200.00 to the

owner of the motor cycle leaving him with only N100.00 as his daily income. He added that in view of all these explanation on his additional domestic responsibilities and daily income, he cannot afford N7, 000.00 being demanded by the appellant as a review of the maintenance all allowance for his two children. Instead, he offered to be paying N2,000.00 monthly.

On her second chance, the appellant confirmed that the respondent has a second wife and another two children by this wife. She also confirmed that the first daughter of the second wife, Ruqayyah, is going to school She therefore willingly changed her mind to request for N5,000.00 review for maintenance of her two children instead of N 7, 000.00 although, she denied that the respondent is a hired commercial motorcycle rider instead. She said. He, the respondent, has six (6) motorcycle given to six (6) people she knows for commercial purposed.

Meanwhile. We rose at 12.45pm after telling the two parties of our resolve to give our judgement, God- willing. on 4th May, 2011.We therefore retired to our chambers (in Share) for routine conference on the appeal In the course of our brainstorming we discovered that we needed to clear certain point with the two parties to enable us arrive at a just decision ; hence we recalled them both to our chambers. The appellant told us that she can bring witness to confirm that the respondent has six commercial motorcycle fetching him a lot of money. But the respondent denied same and insisted that he is an okada employee.

After this session/ encounter, we decided to use our earlier date fixed for judgement (I e. 4/5/2011) to hear further, both the appellant and the respondent. but particularly to hear the appellant and her witness to enable us decide accurately on the review of the maintenance allowance on appeal for the two children, Mansurah and Qudus This action and decision of ours is allowed by our Rule,

Order 3 Rule 7 (1) AND (2) (g) of the Sharia Court of Appeal Rule which states inter alia.

> 7(1) At the hearing of the appeal the shall peruse the record of the case made in the court.
>
> 7(2) The Court shall not normally re- hear or re-try the case but 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.
>
> 7(2) do or order to be done anything which the court below has power to do or order. (Emphasis ours).

Base on this power we asked the appellant to bring her witness on the adjourned date to confirm her claim that the appellant has six commercial motorcycle which she intended to use to convince us that the appellant could pay more than N2, 000 he was offering to pay as monthly allowance on the two children.

On the adjourned date. date. 4th May 2011, the appellant could bring only three witnesses:

(1) Pastor Joseph Ibiwoye of Oke Igbala Compound, Share. 35 yrs old. A Christian by faith and a commercial motorcycle rider at Share. This witness confirmed knowing the respondent as a motor cycle dealer from whom he bought his motorcycle at N135, 000 on hire purchase in August, 2009. To him he has paid him N97,500 leaving him with the balance of N37,500. This witness innocently emphasized that the respondent is a dealer in new machines on from whom many people he knows have bought new machines on higher purchase. He also disclosed that the

respondent is a groundnut farmer and that he is not related to him.

The respondent confirmed this testimony.

(2) Baba Yellow is the second withness. He gave his full names as Aliyu Aweda a.k.a Baba Yellow of Ile Baale, Shaare. He said he was 45yrs old, a Muslim, an okada rider and a mechanic of grinding machines.He told us that he knew both parties as husband and wife and also knows the respondent as a dealer in new motorcycles from whom he bought his own machine in November 2010 at hire purchase and at N75,000 although, according to him, he has since completed the payment of this installment. He added that Pastor (the first witness) and one Jimoh Adebiopon also bought their machines from the respondent also on hire purchase. He concluded by telling us that he does not know any other job of the respondent the respondent also confirmed this testimony.

The respondent also confirmed this testimony.

(3) Brother Jimoh is the third witness. He gave his particulars as Jimoh Salihu of Adebiopon Compound, Share. He said he was 36 yrs old. a Muslim and an okada rider. He said that he only knows the respondent who, he said sold his machine to him on hire purchase in March 2011 at the cost of N90, According to him, the machine is new and he pays N3, 000 monthly installament.

The respondent also confirmed this testimony. We than asked the appellant of the remaining two or three witness. Her responsewas that she no longer had interest in calling any other witnesses as she is satisfied with the testimony of the three witness who had given their testimony before us. We asked her further if she had any other

thing to add to her case to which she said no. We then reserved our judgment till another Share session holding today.

On our part, having read the record of proceeding and having painstakingly listened to both parties and the additional witness to assist us at arriving at the just decision in this appeal. We decided to address the following three issue :

1. Whether the trial judge was right to have awarded N1, 000 monthly for the maintenance of Qudus, a 7 months old child as at the time of this case in his court.
2. Whether the respondent was right to have insisted before us that he could not pay more than N2,000 monthly for the maintenance of his two children of the marriage between him and the appellant.
3. Whether mansurah, the first daughter who was not mentioned at the trial court, but mentioned before us isalso entitled to maintenance.

On issue 1. we decided not to labour this issue. Our learnedbrother in the lower trial court decided this issue only on compassionate grounds because the appellant did not raise the issue of maintenance of her child before this court In other words, there was no counter claim by her before the court. Moreover, It was the respondent who sued her and his claim before the court as clear shown on p.1 of the records of proceeding is . in his words" I sue my wife for divorce …" Therefore, the appellant cannot, in our own opinion, complain on inadequacy of what she was awarded as maintenance for his child, Qudus. What the appellant should have done immediately the order was handed down was to raise counter claim which the judge was bound to hear and decide. The was the appropriate time too she should have added the issue of maintenance of the first child. Mansurah. The blame or failure to do this could not have been placed or visited on the trial court

judge. We therefore, resolved this issue in favour of the lower court.

However, the issue of child maintenance Under Islamic law is no crucial that we had to beam our search light on it with a view to seeing how we can arrive at a just decision on this matter. This bring us to the second issue We discovered in the following authority that it is the responsibility of the father to maintain his child or children … In **Sirajus- Salik,** Vol at page 112 it is provided that:-

The father should maintain his child till (he) attains the age of majority and capable to earn a living

ينفق الأب على الابن إلى * بلوغ حزا بكسب عاقلا

(راجع سراج السالك ج2 ص 112)

Similarly, Abdul Rahman Al- Juzayry in his book, **Kitabul Fiqhi ' Alal Madhahibil 'Arba**' Vol at page 513 provides that:

It is mandatory on the father to maintain his children

يجب على الأب نفقة أولاده….

Furthermore, in Al Mudawwana Al- Kubrah Vol.11 at page 247. The author, Al- Imam Bn Anas Al– Asbahi consider this responsibility mandatory when he says:

In all circumstances, his (I e. the child's) Maintenance is mandatory on the father If the child has not attained the age of Puberty….

على كل حال على الأب نفقة ما لم يحتلم …. (راجع: المدونة الكبرى ج2 ص 247)

In view of all these plethora of authorities, the res pendent has no option other than to maintain and to continue to maintain his children as stipulated by law. And we so hold.

Be that as it may, the respondent has no option other than to adequately maintain his two children as provided by law and in accordance with his means. He cannot, and repeat, he cannot insist to pay only N2,000 monthly for two children when series of evidence before us in this our court proceeding have revealed that he can pay more. This issue is therefore resolved in favour of the appellant.

On issue 3- the last issue – we hold that although Mansurah's case was not an issue at the trial Area Court. But she too is entitled to adequate maintenance regardless to wherever she lives since her paternity is not in dispute We rely on all the authorities quoted above to arrive at this decision.

Finally, and in view of the evidence before us. We hereby order the respondent to be paying five thousand Naira only(N5,000) in all every month with immediate effect for maintenance of both Mansurah and Qudus. Mansurah is awarded three thousand Naira only (N3,000) while Qudus is awarded two thousand Naira only (N2,000). However these two awards are reviewable upward or downward depending on the economic dictates of our time in future. Moreover, and until further notice the amount awarded shall be paid into Share Registry for disbursement accordingly every month not later than the last day of each month.

This appeal succeeds and. We so declare.

SGD	**SGD**	**SGD**
M. O ABDULKADIR	S.O. MUHAMMED	S.M. ABDULBAKI
HON. KADI	HON KADI	HON. KADI
31/5/2011	31/5/2011	31/5/2011

(19) IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIA
IN THE SHARIA COURT OF APPEAL OF LAFIAGI JUDICIAL DIVISION
HOLDEN AT SHARE ON TUESDAY 31st MAY, 2011

BEFORE THEIR LORDSHIPS:

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

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

M.O. ABDULKADIR - KADI, S.C.A

MOTION NO, KWS/SCA/CV/M/LF/04/2011

BETWEEN:

AISHETU ABDULLAH - APPLICANT

VS

ABDULLAHI JIBRIL DAMA - RESPONDENT

principle:

Three months period is the maximum adjourning in respect of suit involving succession or similar matters.

STATUES/BOOKS REFERRED TO:

1. Ashalu – Madarik Vol .III P. 199
2. Tabsiratul – Hukam is Fatihu Maliki Vol. I P. 80
3. S. 277 (1) of 1999 constitution.
4. Ashalul – Madariki Fi – Sarih Irshadu – Salik by Imam Maliki Vol. III P. 212.
5. Ah Kamul – Ihkam p. 19.

RULING: WRITTEN AND DELIVERED BY M.O. ABDULKADIR

This is a motion on notice filed by the applicant **Aishetu Abdullahi** against the respondent Abdullahi Jibril Dama.The motion is dated 25th day of March 2011, but filed 28th of March 2011

respectively. Counsel Joseph Oboete appeared for the applicant while Counsel A.H Sulu-Gambari appeared for the respondent.

The motion is praying for

1. An order of this Hon. Court directing the U.A.C. Ilorin to accelerate the hearing of this suit and
2. For such further order as this Hon. Court may deem fit to make.

In support of the motion, the applicant deposed to a 12 paragraph affidavit, and he relied on all the affirmations contained in the supporting affidavit.

The grounds upon which the application was based are as follows:-

1. That the substantive suit upon which this application is brought was instituted on the 29/9/2009 before the Area Court 1 Shonga.
2. That this suit has been transferred severally from one upper Area Court to another because of the frustration that the applicant had suffered as a result of the delay that this suit has caused at those various Courts.
3. That the period between when the Applicant instituted this case before the Upper Area Court1 Shonga and now when it is before the Upper Area Court1 Ilorin is over 18 months.
4. That it is in the interest of justice to order the Upper Area Court1 Ilorin currently handling the case to conduct an accelerated hearing of this suit without further delay.

Even before this present motion, the applicant had earlier filed another motion dated and filed on 23/2/2011, but before he moved this present motion, he had applied to withdraw the first one. That

application was not opposed to by the respondent's Counsel and as a result of which this Hon. court struck out the said motion.

The respondent's Counsel also filed a notice of preliminary objection to the jurisdiction of this Hon. Court in entertaining the motion of the Applicant. The notice was dated and filed on 23rd of February, 2011 respectively.

The grounds upon which the notice of preliminary was based objection are as follow:

1. That this court is not a court of first instance entertaining a baseless and frivolous application like this.
2. There is no valid notice of appeal before the Court.
3. The applicant can pray the trial court to transfer and which step she refuses to take.
4. This application contributes abuse of court processes and therefore vexatious, annoying and provoking.

On 4th May, 2011. When the counsel to the respondent stood up to move his preliminary objection, he was asked to wait until the applicant's counsel finishes his submission. we took this step to line ourselves with the normal procedure under Islamic law, unlike Common law where a preliminary objection is heard first before a motion on notice.

Under the Islamic procedural law a plaintiff, a complainant, an applicant or an appellant is the owner of his/her case, he/she has a right, or freedom to state his/ her case first in the way he wishes to establish it. It is thereafter the defendant/respondent shall be called upon to exercise his/her own right too to defend or reply the claim or assertion. In support of this principle we referred to a famous/notorious, well acclaimed and established Islamic Law book Ashalu-Madarik Vol.111 Pg.199. It states as follows:

ولايحكم حتي يسمع تمام الدعوي والبيتة ويسال المدعي عليه هل لك مدفع. (راجع اسهل المدارك ج٣ ص199

A judge shall not give his decision On any matter, until he heard the Statement of claim and evidence fully from the plaintiff. Therefore. He shall ask the defendant if he has a defense to put with proof.

There are other persuasive authorities contained in our Annual report regarding the issue of preliminary objection as far as Islamic law procedure is concerned. See Appeal No KWS/SCA/CV/AP/IL23A/2004 of 18th May, 2005 and Appeal No KWS/SCA/CV/AP/IL/09A/2005 of 26th October, 2005. It was held therein that

I. The practice of raising preliminary objection with or without notice does not find ready accommodation in Islamic law. Everything a defendant or respondent had to say shall wait until the complainant put up his claims and proof succinctly before the court. The respondent then has the whole right to react at the end of statement of claim and proof by the plaintiff (See 99-101 particularly at page 101 of Sharia Court of Appeal Annual Report, 2005.)

II. The alleged incompetence and claim by the respondent can all come as a way of response. This is neater in Islamic law because it follows its practice and procedure that the complainant should be allowed to make his full statement of claim (da'awah) and proffer evidence (bayyinah) before the respondent comes in (See pages 1 93-195 particularly at pg 295 of Sharia Court of Appeal Annual Report 2005)

The above procedure remains as it is and shall remain as it is based on the prophetic authoritative saying that;

The onus of proof is on the complainant while the oath is on the defendant.

البينة علي المدعي واليمين على من أنكر.

Having said this. We now proceed to the submission of the applicant's counsel where he formulated 2 issues for determination in the application. They are:-

1. Whether or not this court has jurisdiction to entertain this application.
2. Whether or not there is merit in this application.

The applicant's counsel submitted in respect of No1 that, this Hon. Court has jurisdiction to entertain this application, this is because that by the combined effect of S.277(1) of 1999 constitution of the federal Republic of Nigeria and S.10 (1) of the Sharia Court of Appeal Law Cap 54 2006 Laws of Kwara state. By the provision of this law this court has supervisory power over any Area court in this state in respect of any matter relating to Islamic personal law. The counsel submitted further that it is quite clear from the body of this application that, what the applicant is praying this Hon. Court to do is to invoke its supervisory power in her favour, this is as a result of set back they have suffered at the various lower courts. The counsel also stated that for the applicant to pray this Hon. Court for invocation of this supervisory provision, there is no condition precedent that we must have filed a valid notice of appeal before we can ask the court to invoke the power and this is proper court where such an application can be made, as they can not go to the lower court and it will not be proper that party should pray a lower court to order itself to accelerate a hearing of a case pending before it, the counsel contended that it is a higher court that can give an order to a

lower court and not the Area court over ruling itself. The counsel referred to the case of **ABDULLAHI IBRAHIM VS BABA TAPA SCA ANNUAL REPORT** (2004) pg 41 at 48 paragraphs 2.

On the second issue - that is whether or not there is merit in this application, the counsel referred this court to the prayers of the applicant, the grounds, and the affidavit in support of the application, he said the motion has shown unnecessary delay which has occasioned suffering of the applicant. It is said that justice demands that the parties before the lower court should know the outcome of their suit within a reasonable time and that litigation must have an end. In that regard, the counsel submitted that the substantive suit upon which this application was brought was first filed on 29 /9/ 2009 before Area Court No1 Shonga between then and now the suit has passed on several Area courts and as at the date we filed this motion this suit has been dragging on for 18 months. The counsel submitted further that under Islamic Law the court has severally held that matters relating to Islamic personal law involving succession and their like, including marital issues should be disposed off within 3 months. The counsel referred us to the case of AMINATU JUBRIL VS JUBRIL KODAGBA 2005 at 207 last sentences this present matter involving marital issues.

Finally, the applicant counsel urged this court to grant this application in the interest of justice and in the light of our affidavit before the court. He also urged the court to discountenance with the counter affidavit before the court as this application does not constitute an abuse of courts process.

In his own response on point of law the Respondent Counsel Sulu Gambari Esq. told the court that it is a law that once a motion is struck out by a competent court such a motion goes with other papers attached to it, he said the counter affidavit the applicant's counsel was referring to, is the counter affidavit filed by the respondent

against the motion the applicant was referring to which has been struck out.

On the current motion dated 25th March, 2011 and field on 28th March, 2011,the Respondent counsel prayed the court to take a serious look into paragraph 3, 4, 5, 6, and 7 of the affidavit in support of the motion just moved, he said the applicant did not state the role the Respondent played in the delay of the substantive suit before the trial court, but rather herself was the one seeking for transfer of the case from one court to another without placing the material fact before this court that the court below actually did the delay the hearing of her matter. The counsel referred us precisely to paragraph 6 of the affidavit in support that it was a week after precisely on 23/2/2011 she filed a motion on notice before this court, praying for transfer of the substantive suit before that lower court, at the same time he went on to file another motion on 28/3/2011 praying this court to order the trial court to accelerate the hearing of the substantive suit before it, the counsel said that all this shows that it is the applicant herself that was causing the delay of her case before the lower court. Counsel Gambari also referred us to paragraph 3 of the supporting affidavit and said that the question is, is the applicant complaining against the lower court or against the Respondent for the delay, he said their simple answer is, the applicant is neither here nor there, the counsel submitted further that section 277(1) of the 1999 constitution cited by the Applicant's is counsel and the case of Alhaji Ibrahim Abdullahi VS Baba Tapa are two conflicting citations as in respect of this motion under consideration.

On the case of Baba Tapa, the Respondent's counsel told the court that, the procedure adopted in that case calling for invocation of supervisory power of this court is not the same as the procedure adopted in this case.

On section 8 of the Area court Law, this section gives an inspector of an Area court power to inspect the proceeding of the Area court under it. The applicant in this case has not placed before this court whether she has approached the inspector to complain of the delay in her matter before she came to this court for this application.

The Respondent's counsel submitted further that section 277(1) of the 1999 constitution gives this court power of supersory role but it is ancillary to the jurisdiction of this court to hear appeal from the lower court and not to sit as first instance court as the applicant want it.

As for the preliminary objection filed by the Respondent on 28/4/2011 to the jurisdiction of this court to entertain the motion of the applicant dated and filed 25/3/2011 and 28/3/2011 respectively.

The Respondent's counsel submitted that, by the provision of section 53 of the Area court law and order 3 of Sharia court of appeal rule, this court sit on an appeal of any aggrieved party to a decision or order of any Area court and that unless an Area court decides a point before it that an aggrieved party would have a right to appeal over that decision of the Area court, the counsel said further that, as regards this present application, it is not shown that the Area court before which this suit of the applicant is pending has been confronted with the prayer that the applicant is seeking this Hon. court to grant, and that the Area court has taken a decision over that prayer before it and as such the application is unmeritorious.

The Respondent's counsel sought to adopt his submission before this court on his reply to the motion dated 28/3/2011 submission to his grounds 3 & 4 of his notice to the preliminary objection. The counsel therefore prayed this court to grant their own prayer and to dismiss the motion of the applicant.

In response to the preliminary objection counsel Oboete urged this court to discountenance with it entirely, and in support of his position he applied to adopt his submission in respect of his application. The applicant's counsel finally told the court that they are not here on an appeal against the Respondent, but they are in this court to pray this court to exercise its supervisory power on the Upper Area Court to order it accelerating the hearing of the substantive suit before it.

We have patiently and attentively listened to both counsel to the applicant and the respondent respectively and we have a critical look and study through the motion paper and the ground upon which the motion was based. In the same vein we went through the notice of preliminary objection and its four grounds, we also pondered on the antecedents that led to filing of the motion itself.

It is trite that when ever a court's jurisdiction is challenged the issue must be expeditiously resolved before consideration can be given to other issues. It was held in the case of Matari VS Dangaladima (1993) 3 NWLR (pt 281) at 266 referred to p.182 paragraph G – H. That - :

> "*Although doing substantial justice free from common law procedural shackle, nevertheless, such courts should not escape the issue of jurisdiction where and when duly raise".*

In the instant application, the jurisdiction of this court in entertaining the motion of the applicant has been taken up by the respondent through his notice of preliminary objection filed on his behalf by his counsel A.H. Sulu Gambari Esq. We therefore found it necessary to resolve the issue of jurisdiction before any other issue arising from the application if at the end of the day becomes necessary.

Jurisdiction is defined in page 189 of a concise Law dictionary as "the power of a court or judge to entertain an action, petition or other proceeding". Thus, a judgment, decision, ruling delivered by a court without jurisdiction is a nutty.

There is no doubt that the application before us is brought about not as a result of lower court's decision or order against which we are called upon to rectify. It is as a result of this we formulate 2 issues for consideration

(a) Does the Sharia court of Appeal have jurisdiction to entertain this type of application.

(b) Assuming without conceding that this court has jurisdiction, when and at what point in time is the jurisdiction exercisable.

For easier reference, these 2 questions shall be answered one after the other.

In answering question one above, we have to aline ourselves to the enabling law that gives this court power/ jurisdiction to entertain matters.

1st, is section 277 (1) of the constitutions of the Federal Republic of Nigeria 1999 S 277 (1) says "The Sharia court of Appeal of a state shall, in addition to such other jurisdiction as may be conferred upon it by the law of the state, exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law which the court is competent to decide in accordance with the provisions of subsection (2) of this section".

The gist of the content of the section is that, the Sharia court of Appeal of a state shall subject to additional jurisdiction as may be conferred upon it by the law of state exercise such appellate and supervisory jurisdiction in civil proceeding involving question of

Islamic personal law which the court is competent to decide in accordance with the provision of subsection 2 of this section.

The section gives the SCA two things:

(a) Appellate jurisdiction

(b) Supervisory jurisdiction.

Appeal is defined in page 29 of a concise dictionary as "Any proceeding taken to rectify an erroneous decision of a court by bringing it before a higher court"

See also -: The book of tabsiratul hakam in Fathu Almahki Vol.1 page 80: it reads:

Chapter on the person against whom a judgment is given filing an appeal, demanding that the appeal be allowed.

فصل قي قيام المحكوم عليه بطلب فسخ الحكم وهو علي وجوه. (راجع تبصرة الحكام في قتح العلي المالك ج **1**, ص**8**).

From the fact placed before us by the applicant it is vividly clear that the trial upper Area court which is entertaining the substantive matter, has not made any pronouncement, nor brought before it delivered decision, judgment, or ruling on the matter by the plaintiff/Applicant. Having ascertained that, we hold that we can not exercise our appellate jurisdiction on none existing matter as it is not possible to place something on nothing and expect it to stay definitely it will not stay it will collapse. In a nut shell, appellate jurisdiction is exercisable when a decision or ruling has been made by Area court in Muslim family law causes.

Under the Islamic Law, judgment is of four categories, the detail of it was given by Shaykh Ibn Farhun as:

1. Appeal against the judgment of a judge who is learned and upright such an appeal should be dismissed.

2. Appeal against the judgment of a judge who is neither learned nor just such an appeal should be allowed.
3. Appeal against the judgment of a judge who is incompetent because of his possible for or against a party because of his relationship with him, such an appeal should be allowed., and
4. Appeal against the judgment of a judge by an aggrieved party who after the judgment possesses an information to present which he did not have during the trial, such an appeal should be allowed.

In a similar opinion, Abubakar B. Hassan Al-katsinawiy said:

"*if the court gives judgment based on what is not certain, the aggrieved party has the right to challenge it and ask the verdict be annulled*"

فإن فعل ذالك مع شك أوتردد وللمحكوم عليه القيام بطلب فسع الحكم (راجع أسهل المدارك شرح إرشاد السالك في فقه إمام الأئمة مالك ج (٣) ص ٢١٢

Be that as it may and as it has been held earlier that the same S. 277 (1) of the constitution that gave the Sharia court of Appeal appellate jurisdiction, we want to reemphasize that it is the same section 277(1) that gave us the supervisory jurisdiction, but definitely the two are not the same. Black's Law Dictionary defined supervision in page 1452 as follows:-

I. The act of managing, directing or overseeing persons or projects.....
II. Supervisory control as the control exercised by a higher court over a lower court, as by prohibiting the lower court from acting extra jurisdictionally and by reversing its extra jurisdictional acts. This power includes "power

> of mandamus" which is "issuing of a writ by a superior court to compel a lower court or government officer to perform mandatory or purely ministerial duties correctly".

Supervisory jurisdiction of SCA is exercisable when the Area court have not pronounced judgment or ruling and there is need or cause to ensure that the courts do not derail from the path of justice in the matters before them. We therefore, hold that we have jurisdiction to entertain the application as we resolve issue No 1 in favour of applicant more especially when the suit before the trial court is on divorce.

On the issue No2 it. is our considered view that it is not necessary that a matter must have been decided upon by the lower court in one way or the other before a party can apply to the Sharia court of Appeal for the exercising of its supervisory jurisdiction. It is not when and until an aggrieved party against a judgment, decision or ruling of a court files a notice before us. Islamic law is much more after the substance than the form, what is important is that the matter before the lower court must be one falling under Muslim personal law and can be made at any stage of proceeding. See the case of Abdullah Ibrahim V. Baba Tapa (2006) Sharia court of Appeal annual report, kwara state page 262-270 at 267 and since the subject matter of the substantive suit before the trial court is a divorce case and of course one falling under Muslim personal law, we hold that we can at this stage exercise supervisory power on the Area court trying this matter an as such. This question is also resolved in favour of the applicant.

Finally, we examined and considered the complaint of the applicant, the allegation whether is against the Respondent or the court it is our considered view that 18 months is too much for a mere divorce suit to still remain at the stage of mention.

Interest of justice will not be served if the suit is still allowed to remain as it was before this application was filed before us. It is said that justice delayed is justice denied, and in the interest of justice we feel that we can not do otherwise than to accede to the request of the applicant in the interest of justice.

In the premises of the foregone and in view of the fact that this is a matter of Islamic law, and by virtue of our supervisory jurisdiction over it we hereby direct the Upper Area court1 to give this matter accelerated hearing and determination within a period of 3 month, in accordance with the Islamic law procedure which says:

Three months period is the maximum adjournment in respect of suit involving succession or similar Matters.

وفي أصول إرث أوسوا الأشهر منتهاه ثلاثة (راجع إحكام الاحكام (ص) ١٩)

The application succeeds.

SGD	**SGD**	**SGD**
M.O.ABDULKADIR	**S.O.MUHAMMAD**	**S.M.ABDULBAKI**
HON. KADI	HON. KADI	HON. KADI
31/05/2011	31/05/2011	31/05/2011

(20) 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 MONDAY, 6TH DAY OF JUNE, 2011
5TH RAJAB 1432AH

BEFORE THEIR LORDSHIP:

A.A. IDRIS - HON. KADI
M.O. ABDULKADIR - HON. KADI
A.A. OWOLABI - HON. KADI

APPEAL NO. KWS/SCA/CV/AP/IL/04/2011

SIKIRAT ABDULKADIR - APPLICANT

AND

ALHAJI KEHINDE ABDULKADIR - RESPONDENT

Principles:

1. Under Islamic Law divorce is permissible but abhorred by Allah.
2. Sulhu is a recommended action against litigation.
3. Reconciliation is better by far than litigation.
4. Power of Talaq rests with the husband.
5. Under Islamic law, a court can investigate the financial position of husband to ascertain what would be fixed as maintenance allowance, if need arises.
6. Feeding clothing and housing (i,e) maintenance are all the responsibilities of the husband until the expiration of waiting period (Iddah) in a revocable divorce.
7. Under Islamic law, an admitted claim needs no proof.

STATUES/BOOKS REFERRED TO:

1. Q5 : 44 -47
2. Q5:45
3. Order II part I of Area Court Civil Procedure Rules 2006
4. Q 2 " V 230
5. Ihkamul – Ahkam on Tuhfatul- Ahkam P.133
6. Q4 V 35
7. Q4 – 128
8. Ihkamul – Ahkam on Tuhfatul- Ahkam P.18
9. Ihkamul – Ahkam P. 15 and Malik Law Ruxton
10. Ihkamul – Ahkam P. 286
11. Order 12 Rule 1 of Area Court Civil procedure rule 2006
12. Fiqh Sunnah Vol. 3 P. 305
13. Al-Fiqh Al-wadihu Vol. 2 P 102 by Dr. Mohammed Bakir Ismail.
14. Fiqh Sunnah – Vol 2 P 9 210 by Sayyid Sabiq
15. Dasuki on Mukhtasar Vol. 11 and Mawahibul Jalil Vol.11
16. Ihkam Ahkam on Tuhfatill- Hukkam P. 147 & 151
17. Q 65:6
18. Q 2 V 228
19. Order III Rule 7 (2) SCA Rules 2006.
20. Tuhfatul Hukkam P. 325

JUDGEMENT WRITTEN AND DELIVERED BY: A.A. OWOLABI

This is an appeal against the decision of Area Court Grade l No. 2 Center Igboro, Ilorin suit No. 29/2011, case No. 30/2011 delivered on 7th February 2011.The appeal was dated 14/2/2011 and filed on 25/2/2011. The parties, Alhaji Kehinde Abdulkadir, who is the respondent and Sikiratu Abdulkadir, the appellant; represented by S.A. Mohammad Esq. were formerly husband and wife.

The respondent instituted a case against Sikiratu AbdulKadir for divorce on the ground of lack of respect, arrogance and troublesomeness.

In her reaction, the appellant did not object to the divorce prayer she replied that "since he has now come to divorce me I am equally ready to divorce him because he is found of abusing his children and raising causes (sic) on them" but she later claimed N20,000:00 as maintenance cost for accommodation for the waiting **(iddah)** period. The respondent accepted and agreed to pay N5,000:00 for that period.

The trial court, in considering the totality of the proceedings before it dissolved the marriage since both parties have agreed and awarded N8,000:00 for rentage of house during the waiting **(iddah)** period.

The appellant being dissatisfied with the judgement of the trial court filed three grounds of appeal devoid of particulars in the Notice of Appeal dated 14th April,2011 as follows;

> *1.The decision of the Area Court Grade 1 No. 2, Centre Igboro, Ilorin which ordered the dissolution of the marriage between the parties without first making any recourse to the principle of **"Sulhu"** is unfair, unjust, unreasonable in the circumstances of this case.*

2.The grant of ***₦8,000:00*** *as house rent to the Appellant during Iddah period is not only inadequate but also unfair, unjust and unreasonable in the circumstances.*

3.The decision of the Area Court Grade 1 No. 2, Centre Igboro, Ilorin which ordered the Appellant to observe Iddah period without Iddah maintenance allowance from the Respondent herein is unfair, unjust and unreasonable.

On the 17th May 2011 when the appeal came up for hearing, the learned counsel for the appellant , identified and subsequently formulated the following three (3) issues from the three (3) grounds of appeal for determination;

1. Whether the learned trial judge was fair and just in dissolving the marriage between the appellant and the respondent.
2. Whether the amount granted the appellant as rent during the **iddah** period was adequate.
3. Whether the appellant ought to have been awarded maintenance allowance.

The learned counsel preferred to proffer argument on the three (3) issues formulated **seriatim**.

On issue No1, the learned counsel urged this court to answer same in the negative. Elaborating on this prayer, he submitted that this court should hold that the procedure adopted by the learned trial judge in dissolving the marriage between the parties was most hasty, rash, unfair and unjust.

He submitted that, it is on record that the appellant was the defendant before the trial Area Court, where the respondent was the plaintiff thereat. He further submitted that the proceedings leading to

the dissolution of marriage between the parties started and ended on the same, 7/2/2011. He referred us to pages 2 and 3 of the record of proceedings. He submitted that it is crystal clear from the referred two pages that the learned trial judge did not allow any room for amicable settlement. He added that the learned trial judge hurriedly and indifferently jumped into carrying out one of the most sacred duty; that is one of the most detested permissible act (**halal)** by Allah (Subhanahu wata-ala) as seen from the following hadith.

*Meaning: ''The most detested thing in the sight of Allah is divorce (**talaq**;) even though it is permissible.''*

" أبغض الحلال إلى الله الطلاق".

The learned counsel further referred to the Holy Quran 4:35 and further submitted that the procedural practice which has become institutionalised is that courts usually grant some adjournments in order to explore amicable settlement between parties. This **alas**! was not the case in the matter leading to this appeal. He then urged this court to hold that the trial judge was unfair by hurriedly untying the nuptial knot that legally binds the parties in matrimony, thereby occasioning miscarriage of justice and this act of the trial judge violated the Quranic provisions in Quran 5:44, 45 and 47.

Meaning: ''If any do fail to judge by what Allah Hath revealed, they are unbelievers.'' Q5:44

"ومن لم يحكم بما أنزل الله فأولئك هم الكافرون" . سورة المائدة آية **44**

Meaning: ''And if any fail to judge by what Allah Hath revealed, they are wrong-doers.'' Q5:45

"ومن لم يحكم بما أنزل الله فأولئك هم الظالمون". سورة المائدة آية **45**

'If any do fail to judge by what Allah Hath revealed.

"ومن لم يحكم بما أنزل الله فأولئك هم

They are those who rebel''. Q5:47 **الفاسقون" . سورة المائدة آية 47**

He finally urged this court to decide this issue in favour of the appellant, to set aside the judgement of the trial court and to order a retrial whereby the earlier quoted Quranic injunctions would be adequately complied with i.e. Quran 5: 44, 45 and 47.

On issues No 2&3, the learned counsel argued same in the alternative to the issue No 1 **supra**. Specifically, on issue No 2, the learned counsel urged us to resolve the issue in the negative, that is, for us to hold that the sum of ₦8,000:00 awarded by the trial court is grossly inadequate giving the financial standing of the respondent and the present economic reality of things. He referred to Quran 65 Verse 6.

The learned counsel asserted that the appellant had expended the sum of ₦25,000:00 to secure accommodation. The learned counsel referred us to page 3 line 7 of the record of proceedings and submitted that the respondent who claimed that he is a pensioner, did not give the lower court opportunity nor benefit of knowing how much he earned per month. He added that respondent's earning can adequately and comfortably accommodate payment of the sum of ₦25,000:00 to the appellant as the entitled rent during waiting period **(Iddah)**;(3 months). The learned counsel urged us to decide this issue in favour of the appellant.

On issue No 3, the learned counsel urged us to answer the issue in the affirmative. He submitted that the position of **Sharia** is that a woman observing waiting period **(iddah)** of a revocable divorce such as the appellant herein is entitled to maintenance in terms of feeding, accommodation, and right to inheritance. On this, he referred us to page 246 of **The Practice of Muslim Family law** by M.A Ambali. He submitted that the record of trial court did not include waiting period **(Iddah)** maintenance allowance. He finally urged this court to

order the respondent to pay ₦20,000:00 as waiting period **(Iddah)**maintenance allowance to the appellant.

Respondent, on his part, submitted that the learned trial judge was on the right path/track in dissolving their marriage because on the very day that he narrated his own statement; praying for divorce of the appellant the appellant on inquiry by the trial court, conceded to his request for divorce.

Based on the concession of the appellant to the respondent's claim the trial court granted divorce between them.

On issue No 2: the respondent replied that taking into consideration his own salary and income, the said sum of N8,000:00 awarded for house rent for the period of waiting period **(Iddah)** was adequate.

On issue No 3, he replied that he agreed that it is his responsibility to feed (maintain) the appellant during the waiting period **(Iddah)** period. He therefore agreed to give the appellant additional N5,000:00 for feeding as maintenance allowance during waiting period **(Iddah)** period viewing along side that he earns only N7,000:00 monthly as a pensioner.

When asked whether they had something to add, the appellant and the respondent said they had nothing to add.

In reviewing the submissions and reply of both parties and considering the record of proceedings, we adopt the issues raised by the learned counsel to the appellant as appropriate and we adopt same as our issues for determination in this appeal.

On issue No1, the claim before the trial court revolves substantially on ancillary matters relating to marriage under Islamic law. In such case the Islamic substantive and adjectival laws and rules apply.

Order 11 part 1 – of the Area Court Civil Procedure Rules 2006 of Kwara State provides as follows;

> *"After the provisions of order 10 have been complied with, then, if the case is one in which Moslem law is to be administered or applied, the court shall continue the hearing in accordance with Moslem practice and procedure."*

In Ochoko Mamman vs. Ibrahim Yaye (1974) NSNLR 131, it was held that:

> *"Whatever the law to be applied in a case or matter is Islamic law, the court is bound to follow Islamic law procedure".*

The main prayer of the respondent was for divorce while the appellant claimed for rent allowance during waiting period **(Iddah)** period. In Islamic law Quran 2 verse 230 is the authority for divorce:

"You may divorce your wives twice, and then may either keep them with humility or dismiss them with kindness.''

"الطلاق مراتان فإمساك بمعروف أو تسريح بإحسان". سورة البقرة آية 229

It is to be noted that divorce even though permissible it is abhorred by Allah. We refer to prophetic **Hadith** which states thus:

Ibn Umar reported the prophet as saying:- ''The lawful thing which God hates most is divorce". Transmitted by Abu Daud and Ibn Majjah

"عن ابن عمر رضي الله تعالى عنهما قال: قال رسول الله صلى الله عليه وسلم: "أبغض الحلال إلى الله الطلاق". رواه أبو داود وابن ماجه وصححه الحاكم. "

Therefore, divorce is *"a social evil in itself but it is a necessary evil"*. See **Islamic Jurisprudence in Modern World** by Anwar Ahmad Qadri. P380.

The position of law is that marriage stands dissolved/ terminated by the expression of divorce once uttered by a man. See **Ihkam Ahkam** short commentary on **Tuhfatul Ahkam** page 133. The learned counsel submitted that the learned trial judge hurriedly and indifferently rushed to divorce the marriage between the respondent and the appellant. It is trite that the hallmark of judicial propriety is that a Judge should not be hasty in discharging the onerous duty on him because justice delayed is justice denied, likewise justice rushed is also justice crushed.

The whole submission of the learned counsel for the appellant was that the trial judge ought to have ordered for reconciliation and therefore failure to order for same vitiated the proceedings. The respondent replied that the trial judge did the correct thing to affirm divorce in their case where the appellant admitted his claim.

We hold that a request or order or advice for conciliation **(Sulh)** is a recommended action against litigation, this is in consonance with the provisions of the holy Quran, prophetic hadith and consensus of Ulamah.Quran 4 Verse 35 states:

"And if you fear a breach between them (twain), appoint (two) arbiters, one from his family, and the other from hers; if thy seek to set things aright, Allah will cause their reconciliation Allah is knowing, aware.''

"وإن خفتم شقاق بينهما فابعثوا حكماً من أهله وحكماً من أهلها إن يريدا إصلاحاً يوفّق الله بينهما إن الله كان عليماً خبيرا". سورة النساء آية 35

The holy Quran further provides for conciliation in Quran 4: verse128.

"وإن امرأة خافت من بعلها نشوزاً أو إعراضا فلا جناح عليهما أن يصلحا بينهما صلحاً والصلح خيرٌ وأُحضِرَتِ الأنفس الشُّحَّ وإن تُحسنوا وتتقوا فإن الله كان بما تعملون خبيرا"

سورة النساء , آية **128**

"If a wife fears cruelty or desertion on her husband's part, there is no blame on them if they arrange an amicable settlement between themselves; and such settlement is best; even though men souls are swayed by greed. And practice self-restraint, Allah is well-acquainted with all that ye do".

Although the verses incidentally and primarily refer to matrimonial disagreements, the jurists have generalised its application to all forms of rift, being the commercial, social, tribal, political or racial. Reconciliation is preferred to court process.It is in case of dissolution of marriage (**Khul)** that conciliation (**Sulh)** is highly recommended in marriage dispute. It is apparent from the two quranic verses quoted above.

Reconciliation is a process where issues are resolved extra judicial/ out of court settlement either by conciliation **(Sulh)** or reference to an arbitrations **(Tahkim)**. Islam allows that the disputant parties appoint or make one person their arbitrator by submitting their differences to him to be resolved – See **Ihkamul Ahkam** short commentary on **Tuhfatul-Hukkam** line page 81.

"والصلح جائــز بالاتفاق **
لكنه ليس على الاطـــلاق"

راجع تحفة الحكام سطر **309**.

"Reconciliation out of court is unanimously accepted as lawful by all jurists, but not in all circumstances". line 309

It is not allowed, not withstanding the above for a judge to order for reconciliation if the right of a party is clear. See **Ihkamul**

Ahkam short commentary on **Tuhfatul Hukkam** page 15 and Malik law Ruxton P.286.

The above quoted authorities show that alternative dispute resolution is an integral part of Islamic law and of all customary systems in the world, this system should be encouraged particularly in matrimonial contests. This process is already incorporated in Order 12 Rule 1 of Area Court Civil Procedure Rule 2006 where it provides as follows:

> *"A court may, with the consent of the parties to any proceedings, order the proceedings to be referred for arbitration to such person or persons and in such manner and on such terms as it thinks just and reasonable."*

Caliph Umar was in the habit of advising and urging the judges to make an attempt of reconciliation other than going through the whole hog of litigation: he says;

"Refer disputing parties to reconciliation for surely litigation breeds in hatred and enemies" **Fiqh Sunnah** Vol 3 Pg.376.

"وقال عمر رضي الله عنه : " ردوا الخصوم حتى يصطلحوا فإن فصلَ القضاءِ يورث بينهم الضغائن" .
راجع فقه السنة للسيد سابق , الطبعة السابعة , دار الكتاب العربي بيروت ج3 , ص 376 .

Therefore, reconciliation is the best way to resolve conflicts. It is by far better than litigation.

In a divorce by husband, under Islamic law it is not for the wife to admit or deny the pronouncement of divorce by the husband. The sole right of divorce **(Talaq)** is in the hand of the husband to untie the nuptial knot, while **Khul** is in the hands of the wife. See **Al-**

fiqhu Al-wadihu Vol 2 Pg. 102 by Dr. Mohammed Bakir Ismail and **Fiqhus-Sunnah** Vol 2 Pg 210 by Sayyid Sabiq.

From the analysis of the foregone, it is our considered position that failure of the trial court to request both parties to explore settlement could not vitiate granting of divorce initiated by the husband and accepted by the wife. We strongly hold that conciliation (**Sulh)** is not a pre-requisite for such proceedings. The appellant counsel tried to make a mountain out of a molehill. We hereby answer issue No.1 in the affirmative and consequently hold that the issue fails and we hereby dismiss same.

On issue no 2, the appellant submitted that the ₦ 8,000:00 awarded to the appellant against the respondent was inadequate and that respondent did not give the court opportunity to know his financial standing. The respondent replied that the N8,000:00 awarded as house rent for the appellant is adequate taking into consideration his salary as a pensioner.

Nafaqah or maintenance in Islamic law in marriage and during the waiting period **(Iddah)** consists of essential amenities to support human life such as food, clothing, and lodging but excluding luxuries, while the husband is duty bound to provide maintenance to the wife even if she is richer during that period. A woman observing waiting period **(Iddah)** is not expected to incur any personal expenses for her accommodation during the waiting period **(Iddah)**

It is our observation that it is the appellant's duty to adduce evidence relating to the financial standing of the respondent. The appellant failed to adduce any iota of evidence to support the claim as regards the financial standing of the respondent. In the absence of any evidence, the trial court or this court cannot assess the entitled rent allowance due to the appellant. The claim of the appellant counsel that the appellant expended N25,000:00 to secure accommodation will not hold as that was a mere assertion without

proof and same cannot stand. The court, if need arises can investigate the financial position of husband to ascertain what would be fixed as maintenance allowance. See **Dasuki on Mukhtasar** Vol. 11 and **Mawahibul Jalil** Vol 11; Chapter on feeding. It is also stated in **Ihkamul Ahkam** short commentary on **Tuhfatul Hukkam** pages 147 and 151as follows:

Meaning: "It is the duty of the husband to maintain his wives, under whatever circumstances he finds himself".	"ويحب الانـفاق للزوجات في كل حالة من الحـالات
"It is incumbent on the husband to provide accommodation for a divorced wife which marriage has been consummated until the expiration of her waiting period **(Iddah)***".*	إسكان مدخول بها إلى انقضا عدتـها من الطلاق مقتضا"

The appellant submitted that the sum of N8,000:00 awarded against the respondent as house rent was inadequate. Both parties did not either before the trial court or this court assist in assessing the appropriate rent to be awarded. It is the appellant who wants a decision to be given in her favour to adduce evidence of the financial standing of the respondent.

Expectedly, a woman in a revocable divorce is not expected to leave the husband's house to enable both parties use the opportunity of the waiting period **(Iddah)**to reconcile except for fear of problem. Judges of trial court should insist except if it is not conducive that husbands of revocable divorce should leave them in their abode, in accordance with Quranic directive:- Quran 65 Verse 6.

"أسكنوهن من حيث سكنتم من وجدكم ولا تضاروهن لتضيقوا عليهن" سورة الطلاق آية **6** .

"Let the woman live (in waiting period **(Iddah)** *in the same abode as you live, according to your means annoy them not so as to restrict them".*

The learned trial judge magnanimously without any evidence ordered the respondent to pay N8,000:00 for rent accommodation to the appellant. It is our considered decision that the sum of N8,000:00 awarded as rent for accommodation is adequate and appropriate. The issue No. 2 hereby fails and it is hereby dismissed.

On issue No. 3, the learned counsel submitted the position of the law correctly that it is the duty of the appellant to feed the respondent during waiting period **(Iddah)** and he requested this court to order the respondent to pay N20,000:00 for maintenance during that period. The appellant, at the trial court did not ask for maintenance allowance during the waiting period **(Iddah)**nor did the court **suo motu** raise same.

Maintenance in Islamic law is fixed on the husband from marriage till the end of waiting period **(Iddah)**. The divorced woman's expenses for feeding, clothing and housing are all responsibilities of the husband until the expiration of waiting period **(Iddah)** of revocable divorce

This is derived from the Quran 2 verse 228:

"والمطلقات يتربصن بأنفسهن ثلاثة قروء ولايحل لهن أن يكتمن ما خلق الله في أرحامهن إن كن يؤمن بالله واليوم الأخر

'Divorced women shall wait concerning themselves for three monthly periods. Nor is it lawful for them to hide what God hath created in their wombs, if they have faith in

God and the last day and their husbands have the better right to take them back in that period, if they wish for reconciliation. And women shall have rights against them, according to what is equitable; but men have a degree (of advantage) over them. And God is Exalted in Power, Wise.''

وبعولتهن أحق بردهن في ذلك إن أرادوا إصلحاً ولهن مثل الذي عليهن بالمعروف وللرجال عليهن درجة والله عزيز حكيم".

سورة البقرة آية 228

Courts are not Father Christmas, but must consider reliefs as stated before it. Therefore since there was no claim before the trial court and there is no evidence in the record of proceedings except the admission of the respondent before this court this issue also fails and we hereby dismiss same.

It is the inherent power of this court as the appellate court to review and rehear case. See order III Rule 7 (2) of Sharia Court of Appeal Rules 2006, Laws of Kwara State:

> *''The court shall not normally re-hear or retry 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 retry the case in whole or in part……..*

The respondent conceded to pay the appellant N5,000 during the waiting period **(Iddah)** as feeding allowance. This is an admission and it is the law that what is admitted needs no proof. We refer to **Ihkamul Ahkam** short commentary on **Tuhfatul-Hukkam** page 325.

"وما لك لأمره اقــر في صحته لأجنبى اقتف"

"An admission against interest by a sane adult person is binding on him"

راجع تحفة الحكام" سطر **1409**

Without much ado, we order that the respondent should pay N 5,000 to the appellant as feeding allowance for the three (3) months of the waiting period **(Iddah)** and that is our order in view of the admission of the respondent.

In summation, the appeal lacks merit and it is hereby dismissed in part. The judgment of the trial Area Court Grade 1 No 2 Centre Igboro, Ilorin is affirmed with some adjustment as we order the respondent to pay N5,000:00 to the appellant as feeding allowance for the three months of the waiting period **(Iddah)**and we so hold. Appeal fails in part and succeeds in the other part.

SGD	***SGD***	***SGD***
A.A. OWOLABI	**A.A IDRIS**	**M.O . ABDULKADIR**
(HON. KADI)	**(HON. KADI)**	**(HON. KADI)**
6/06/2011	**6/06/2011**	**6/06/2011**

(21) IN THE SHARIAH COURT OF APPEAL OF KWARA STATE OF NIGERIA
IN THE SHARIAH COURT OF APPEAL OF LAFIAGI JUDICIAL DIVISION
HOLDEN AT LAFIAGI ON TUESDAY 21ST JUNE, 2011.
YAOMUL-THULATHA 20TH JUMADAL THANNI 1432 A.H.

BEFORE THEIR LORDSHIPS:

I. A. HAROON	**-**	**GRAND KADI**
A. A. IDRIS	**-**	**HON. KADI**
M. O. ABDULKADRI	**-**	**HON. KADI**

APPEAL NO: KWS/SCA/CV/AP/LF/05/2010

BETWEEN:

USMAN NDAGI	-	APPELANT
VS		
FATIMA NNAMA NDAGI	-	RESPONDENT

principle:

The plaintiff is he whose silence or withdrawal puts an end to his litigation.

STATUES/BOOKS REFERRED TO:

- Fawakihu Dawani Vol. 2 , P 220

RULING: WRITTEN AND DELIVERED BY I. A. HAROON

The appellant USMAN NDAGI filed the appeal against the decision of Area Court 1 Lade in the case No: 16/2110 of 13th April, 2010.

When the appeal came up for hearing on the 21st June, 2011, the parties are absent, though there was a letter from the appellant asking for the withdrawal of the case. The letter is dated 18th June, 2011 not endorsed but thumb printed and beared the name of Usman Ndagi.

In the light of the foregoing where an appellant asked for a withdrawal of his / her matter from the court, in our law the court is left with no option other than to grant the application.

The Islamic principle to this is that:

The plaintiff is he whose silence or withdrawal puts an end to his litigation.

The plaintiff is he whose silence puts an end to his case.

Accordingly, this matter is struck out.

SGD	**SGD**	**SGD**
M. O. ABDULKADRI	I. A. HAROON	A. A. IDRIS
HON. KADI	HON. GRAND KADI	HON. KADI
21/06/2011	21/06/2011	21/06/2011

(22) IN THE SHARIAH COURT OF APPEAL OF KWARA STATE OF NIGERIA
IN THE SHARIAH COURT OF APPEAL OF LAFIAGI JUDICIAL DIVISION
HOLDEN AT LAFIAGI ON TUESDAY 21ST JUNE, 2011.
YAOMUL-THULATHA 19TH RAJAB 1432 A.H.

BEFORE THEIR LORDSHIPS:

I. A. HAROON	**-**	**GRAND KADI**
A. A. IDRIS	**-**	**HON. KADI**
M. O. ABDULKADRI	**-**	**HON. KADI**

MOTION NO: KWS/SCA/CV/M/LF/08/2011

BETWEEN:

HALIMAT WOYE SHAABA - APPLICANT

AND

AL HASSAN SHAABA - RESPONDENT

principle:

Extension of time is granted by the discretion of judges where necessary.

STATUES/BOOKS REFERRED TO:

- Fawakihu Dawani Vol. 2. P 220

RULING: WRITTEN AND DELIVERED BY I. A. HAROON

The applicant Halimatu Woye Shaaba who was the plaintiff at the trial Court 1, Lafiagi sued her former husband Al-Hassan Shaba herein the respondent for lack of maintenance of the six issues of their terminated marriage.

At the trial Court, the matter was heard but before the ruling, the trial Area Court ordered the transfer of the matter to the upper Area Court Lafiagi on 16th July, 2009.

The appellant suppose to file an appeal within 30 days from the date of the order but she failed to do that as required by law.

In this application before us, the applicant filed a motion dated and filed on 12 May, 2011 with 23 paragraph supporting affidavit.

Reviewing the affidavit, our attention was called to paragraphs 2, 8, particularly paragraph 17 that she was confused on what to do until she was guided by a good Samaritan who advised her to appeal to our Court. She therefore filed this application for our consideration.

In Islamic Law, extension of time is granted by the discretion of Judges where necessary.

On our part, we hold a strong view that the application merits our favourable consideration. This is because there was no counter affidavit from the respondent also her reason is cogent while the case itself is in the area of child maintenance associated with divorce, according to Islamic procedural rules, cases such as Divorce, Marriage and Emancipation are not barred from litigation.

Accordingly this application is hereby granted, we extend the time within which to appeal to our Court.

The appeal should be filed within 2 weeks from today.

Application Succeeds.

SGD	**SGD**	**SGD**
M. O. ABDULKADRI	**I. A. HAROON**	**A. A. *IDRIS***
HON. KADI	**HON. GRAND KADI**	**HON. KADI**
21/06/2011	**21/06/2011**	**21/06/2011**

(23) 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 TUESDAY 5TH JULY, 2011.
YAOMUL THULATHA 4TH SHABAN 1432 A.H.

BEFORE THEIR LORDSHIPS:

I. A. HAROON - GRAND KADI
A. A. IDRIS - HON. KADI
A. A. OWOLABI - HON. KADI

MOTION NO: KWS/SCA/CV/M/IL/07/2011

BETWEEN:

ALHAJI ISSA ALABI - APPLICANT

VS

ALHAJI SALIU KAREEM - RESPONDENT

principle:

The Plaintiff is he whose silence puts an end to his matter.

STATUES/BOOKS REFERRED TO:

- Fawakihu Dawani Vol. 2. P 220

RULING: WRITTEN AND DELIVERED BY I. A. HAROON

The applicant, Alhaji Issa Alabi filed a Motion on notice against the decision of the Upper Area Court Omu-Aran in the case No: UACO/CVFM/15/2007 of the 6th January, 2011.

On the 5th day of July, 2011 when the motion came up for hearing the parties are absent while the counsels are present.

G. A. Adefarat Esq., representing the Appellant Ibrahim Ejiko Esq., appeared for the respondent.

Counsel to the appellant said that consequent upon the death of our client who is the appellant in the main appeal; his family

formally notified us of his death and instructed us to formally withdraw this motion. It is a motion on notice for stay of execution brought pursuant to order 3 rule 8 of the SCA Rules dated 24 April, 2011.

We pray the court to therefore grant our application for the withdrawal.

Respondent: No objection.

RULING:

In the light of the facts highlighted by the counsel to the applicant ALHAJI ISSA ALABI the deceased, that the matter be withdrawn and the fact that the respondent did not object. We hereby grant the prayer of the applicant's counsel for the withdrawal of the motion in line with the Sharia principle that states. The plaintiff is he whose silence put an end to this litigation.

The application is accordingly struck out.

SGD	**SGD**	**SGD**
A.A. OWOLABI	I. A. HAROON	A. A. IDRIS
HON. KADI	HON. GRAND KADI	HON. KADI
05/07/2011	05/07/2011	05/07/2011

(24) 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 TUESDAY 5TH JULY, 2011.
YAOMUL THULATHA 4TH SHABAN 1432 A.H.

BEFORE THEIR LORDSHIPS:

I. A. HAROON - GRAND KADI
A. A. IDRIS - HON. KADI
A. A. OWOLABI - HON. KADI

APPEAL NO. KWS/SCA/CV/AP/IL/06/2011

BETWEEN:

ALHAJI ISSA ALABI - APPELLANT
VS
ALHAJI SALIU KAREEM - RESPONDENT

principle:

The plaintiff is he whose silence puts an end to his case.

STATUES/BOOKS REFERRED TO:

- Fawakihu Dawani Vol. 2. P 220.

RULING: WRITTEN AND DELIVERED BY I. A. HAROON

Parties are absent.

G. A. Atofarati Esq., appeared for the appellant while Ibrahim Ejiko Esq., for the respondent.

The pending appeal before this court is dated and filed 21st April, 2011. It is a notice of appeal against the decision of Upper Area Court Omu-Aran in case No: UACO/CVFM/5M/2007. delivered on 6th January, 2011.

In line with the instruction, the family of our client Alhaji Issa Alabi who is now late, that this matter should be withdrawned from the appeal. We urge your lordship to strike out the matter.

The brief submission of the learned counsel intimated us that the appellant is dead and furthermore that the deceased family has no interest in pursuing the matter. He prayed the court to withdraw the appeal and the respondent counsel did not object.

On our part, we viewed this prayer alongside with our law which says. The plaintiff is he whose silence puts an end to his case.

The matter is accordingly struck out.

SGD	**SGD**	**SGD**
A.A. OWOLABI	I. A. HAROON	A. A. IDRIS
HON. KADI	HON. GRAND KADI	HON. KADI
05/07/2011	05/07/2011	05/07/2011

(25) IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIA
IN THE SHARIA COURT OF APPEAL OF ILORIN DIVISION
HOLDEND AT ILORIN ON TUESDAY 5TH APRIL, 2011

BEFORE THEIR LORDSHIPS

A.A. IDIRS	-	HON. KADI SCA
M.A. ABDULKADIR	-	HON. KADI SCA
A.A. OWOLABI	-	HON. KADI SCA

MOTION NO: KWS/SCA/CV/M/IL/08/2011

BETWEEN

DR RAUFU ADEWALE SANI BALOGUN
AND 1 OTHER - APPLECANT

VS

ASHIRU SANNI BALOGUN - RESPONDENT

principle:

If the applicant or appeallant decides to terminate his case he will be left alone.

STATUES/BOOKS REFERRED TO:

- Fawakihu Dawani Vol. 2. P 220

RULING: WRITTEN AND DELIVERED BY. A.A. IDRIS

The suit emerged from the Upper Area Court I, Ilorin with suit No: UAC1/CVFM/ 24/2005. Dr. Rauf Adewale Sani Balogun and 1other were the plaintiff before the trial court and are applicants before this Honourable Court. They sued the defendants who are Respondents before this court to restrain the defendants from dealing with the estate of the deceased father/husband of the parties involved in this case – in a manner prejudicial to the interest of other heirs

which rendered the distribution of the estate impossible by their various acts calculated to convert the whole estate to theirs.

In the motion before this Honourable Court, which was brought pursuant to the inherent jurisdiction of this Honourable Court, they sought for an order of this court to give effect to the judgment delivered by this Hounourable Court on the 20th day of May, 2009 in favour of the applicants.

When the case came up for hearing, the parties were absent, but the counsel for the applicants was present. After his submissions, he prayed this court to allow them withdraw the motion before this Honourable Court.

On our part, we perused the judgment before this court and observed that the applicant had been ordered to go to Upper Area Court No 3, Ilorin where the 7th leg interlocutory prayer would be re-heard. The applicant had failed to do this before filing his Experte motion. In a circumstance like this our judgments are supposed to be declaratory and not executory. Therefore our hands are tied. But to solve this pending problem at hand, the counsel to the applicant requested the court to allow them withdraw the motion filed by them. Based on the above, we recourse to the Islamic injunction which stipulates thus.

If the Applicant or Appellant decides to terminate his case, he will be left alone.

المدعى هو الذى لو سكت لترك على سكوته.

In line with the above injunction we allow the request of the applicants and struck out the motion accordingly.

SGD	**SGD**	**SGD**
A.A. OWOLABI	**A.A. IDRIS**	**M.O. ABDULKADIR**
HON. KADI	HON. KADI	HON. KADI
05/04/2011	05/04/2011	05/04/2011

(26) IN THE SHARIAH COURT OF APPEAL OF KWARA STATE OF NIGERIA
IN THE SHARIAH COURT OF APPEAL OF LAFIAGI JUDICIAL DIVISION
HOLDEN AT LAFIAGI ON WEDNESDAY 6TH JULY, 2011.
YAOMUL-ARBIAU 5TH SHABAN 1432 A.H.

BEFORE THEIR LORDSHIPS:

I. A. HAROON - GRAND KADI
A. A. IDRIS - HON. KADI
M. O. ABDULKADIR - HON. KADI

APPEAL NO: KWS/SCA/CV/AP/LF/07/2011

BETWEEN:

YAMANKO EMITZATZA - APPELANT

VS

IBRAHIM KETSWO - RESPONDENT

principle:

The plaintiff is he whose silence puts an end to his case.

STATUES/BOOKS REFERRED TO:

- Fawakihu Dawani Vol. 2. P 220

RULLING: WRITTEN AND DELIVERED BY I. A. HAROON

The appellant, Yamako Emitzatza filed the Notice of Appeal against the judgment of the Lafiagi Area Court in the case No 58/2011 delivered on the 4th May, 2011.

On the 6th July, 2011 when the appeal came up for hearing the parties are present while the counsel absent.

Registrar: we received a letter dated 5th July, 2011, endorsed by counsel to the appellant praying for withdrawal of the case. The

content informed us that the issues in conflicts have been settled amicably.

Having read the letter refered to above, we view this matter particularly the prayer of the counsel to the appellant for withdrawal in line with provision of Sharia which goes thus.

The plaintiff is he whose silence puts an end to his case.	المدعي هو الذي لو سكت لترك على سكوته

This matter is accordingly struck out.

SGD	**SGD**	**SGD**
M. O. ABDULKADRI	**I. A. HAROON**	**A. A. IDRIS**
HON. KADI	**HON. GRAND KADI**	**HON. KADI**
06/07/2011	**06/07/2011**	**06/07/2011**

(27) IN THE SHARIAH COURT OF APPEAL OF KWARA STATE OF NIGERIA
IN THE SHARIAH COURT OF APPEAL IN THE LAFIAGI JUDICIAL DIVISION
HOLDEN AT TSARAGI ON (WEDNESDAY) 20TH JULY, 2011

BEFORE THEIR LORDSHIPS:

S.O. MUHAMMED - HON. KADI SCA
A.A IDRIS - HON. KADI SCA
A.A. OWOLABI - HON. KADI SCA

APPEAL No. KWS/SCA/CV/AP/LF/05/2011

BETWEEN:

NDAGI MAN - APPLICANT
VS
AZARA NDAGI MAN - RESPONDENT

Principles:

1. Under Islamic Law, a judge shall not give judgment on any issue or matter before him, until it hears all the statement of claims of the Appellant and evidence in his support and then asks the Respondent to put up her defence.
2. Under Islamic Law a judge can only initiate the solemnization of marriage in the absence of the near relations and the traditional rulers, when the biological father wants to force her ward to marry a man against her wish.
3. Under Islamic Law, a girl who is under coercion of her father to marry a man against her wish or sued her parent before a court of law cannot be married until she agrees, but if the judge orders her father to do so she has to agree with the order.

JUDGEMENT: WRITTEN AND DELIVERED BY A.A. IDRIS

The respondent/plaintiff, Azara Ndagi Man sued her father, Ndagi Man, before the Area Court Grade I' Tsaragi in Edu Local Government Area of Kwara State in suit No. 40/2011 with case No 39/2011 on the 28th March, 2011. The respondent requested the trial court to assist her to prevail on her father, (the appellant) to allow her marry a man of her choice.

When the case came up for hearing on the 30th March, 2011, the respondent submitted that she wanted the trial court to assist her to plead with her father to allow her to marry a man of her choice. She complained that her father had earlier asked her to marry one Hajj, a request which she had refused to accept.

In his response, the appellant emphasized that he would not be a party to the contract of her marriage between her and Ndana but that the court could appoint a marriage guardian for her.

After the submissions of both parties for and against, the trial court gave judgment in favour of the respondent. The trial court directed the Chief Imam of Tsaragi to contract marriage between Azara Ndagi Man and one Ndana.

Dissatisfied with the decision of the trial court, the appellant appealed to this court on the 5th April, 2011 and filed the following three grounds of appeal:

(1) That decision of trial court was unreasonable, unwarranted, because there was no hearing. (sic)

(2) That the court lack subject jurisdiction over the matter before it. (sic)

(3) That the court did not allow me to defend myself before order for the contract of my daughter's marriage with another man (sic).

When the instant case came up for hearing on the 20th July, 2011 the appellant said that his daughter Azara sued him at Area Court Tsaragi which led to his appeal before this court. He went further to complain that among other things, the trial court did not record what he said before it accurately. Furthermore, he said he informed the court that he disagreed with the submission of his daughter because she was the person who introduced a man known as Hajj as her proposed husband.

He further explained that when they were about to conduct the marriage, the respondent was nowhere to be found. He further said that he only saw her when she appeared at the trial court where she sued him. He insisted that everything in the record was totally contrary to what was said in the court. To illustrate this, he said that the complaint of the respondent at the trial court was that she was not happy with the man the appellant asked her to marry.

When he was trying to expatiate on his grievances, he maintained that there was no fair hearing because the trial court did not give him opportunity to ventilate his grievances talkless of affording him the opportunity of defense. He therefore urged the court to retrieve his daughter for him, so that he could get another husband for her to marry.

In her response, the respondent submitted that the appellant imposed Hajj on her for marriage and she refused the proposal of the appellant because she only had interest in marrying Ndana instead of the man imposed on her by the appellant who is her father. She submitted further that she sued the appellant because she wanted the trial court to urge him to allow her to marry a man of her choice. The respondent explained further, that the appellant said that he agreed with her choice, but emphasized that he would not contract the marriage. In order to emphasise that she had attained the marriageable age, she submitted that she was above twenty years of

age. And to clear the air about the solemnization of her marriage she said that the Chief Imam of Tsaragi had contracted her marriage with one Ndana in line with the directive of the trial court and to crown it all, she stated that her marriage had been consummated and since then she had been living with Ndana under the same roof. She finally submitted that the record of proceedings was correct.

When the appellant was requested to react to the submission of the respondent, he said that really the respondent was born in 1991. He went further to say that he was informed that the marriage contract between the respondent and one Ndana had been conducted by the Chief Imam of Tsaragi on the directive of the trial court.

We have critically gone through the submissions of both parties, the record of proceedings, the decision of the trial court and, in particular, the appellant's statement of claims. We therefore resolved that the main issues for determination are as follows:-

i *Whether the trial court was not in error to have solemnized the marriage between Azara and Ndana, despite the fact that the issue before it was to prevail over the appellant to allow her to marry a man of her choice.*

ii On the first issues, the appellant said that he was not given enough time to defend himself against the allegation of the respondent at the trial court. It is our considered view that Judges of various jurisdictions have to be cautious when it comes to the issue of adjudication between two parties. The issue of lack of fair hearing may arise because of the personal attitude of a judge to a particular party in the case before him. They should not forget to address their minds to the fact that an unguarded remark action or inaction by a judge can bring the

judiciary as a whole into disrepute. Once a judge uses his judicial power to favour one party to the detriment of the other party, the other party may raise the issue of fair hearing. The trial court should have provided the appellant with the opportunity to defend himself.

Going by Islamic law procedure, a trial court has no right to give any judgment on any case before it without listening to the claims and the proofs of the plaintiff and of course those of the defendant to defend himself on any allegation made against him. In other words, judgment can only be passed by the trial court, after listening to the claims and proofs of the plaintiff and the defense of the defendant. This is meant to eradicate narrow minded and unbiased judgment.

This has been conspicuously stipulated in As-al-Madarik Sharih Irishad Salik written by Abubakar Hassan al-Katshinawiy vol. 3 pg. 199 where he stipulates thus:

The court shall not give judgment on any matter before it until it hears all the statement of claims and evidence in their support and asks the respondent to put up his/her defense.

لايحكم حتى يسمع تمام الدعوى والبينة ويسأل المدعي عليه هل لك مدفع ؟

راجع : أسهل المدارك شرح إرشاد السالك لأبي بكر حسين الكشناوي ج 3 , ص 199 .

We opined that the action of the trial court in this respect was tantamount to a denial of the right to fair hearing as enshrined under Section 36, Sub-section 1- 2 (a) of the Constitution of the Federal Republic of Nigeria. The judgment of the trial court in this case can best be described as jungle justice. We therefore resolved this issue in favour of the appellant.

In resolving the second issue, the prayer of the respondent before the trial court was to plead with her father to allow her to marry a husband of her choice. Thus, this was the core of the matter. Unfortunately, the trial court over-stepped its boundary by hurriedly ordering the solemnization of marriage between the respondent and Ndana which was contrary to the request by the respondent. Above all, the trial judge failed to cite any authority to justify his erroneous action.

In a situation of this nature, the trial court should have followed the normal Islamic practice and procedure instead of using his whims and caprices to adjudicate on this vital issue before him.

Going by Islamic law, before a judge can initiate the solemnization of marriage, the following hierarchical order of guardianship should have been exhausted. That is, all relations, the traditional rulers of the area before finally the judge of the area. See Kitab Nazorat Fil-Figh Malikiyat by Dr. Fatihi Usman Faqih page. 251, where he stipulates thus:-

In the absence of the forgoing i.e. all relations, it becomes duty of the traditional ruler and lastly Kadi to solemnize the marriage of a girl who is under the coercion (**الأجبار**) *of her parent not to marry a man of her choice.*

إذا لم يوجد واحد مما سبق فالذي يتولى تزويج المرأة هو الحاكم أي السلطان أو القاضي.

Also see Siraj Al-Salik Sharih Ashal al Masalik by Sayyid Uthman Bn Hussain page 43 vol. 2.

بكر عضلت : أي منعها أبوها من النكاح ضرار أو رفعت أمرها للقاضي فلا تزوج حتى ترض وتأذن فإن أمر القاضي أباها بنكاحها وأجاب.

A girl who is under coercion of her father to marry a man against her wish or sued her parent before a court cannot be married until she agreed but if the Kadi orders her father to do so she has to agree with the verdict.

Here the judge is not directed to solemnize but to order the father of the girl to do so. It is unfortunate and unfair for the trial judge not to have addressed his mind to the above quoted provisions of Islamic law and principles of guardianship.

After the perusal of the laid down rules, we failed to see the exceptional circumstances that would have paved the way for the trial court to have acted contrary to the above stipulated injunctions that have direct bearing on the issue before it. The trial court should have relied on the foregoing principles of guardianship.

It is our view that order for the solemnization of marriage between the respondent and Ndana was definitely contrary to the request of the respondent before the trial court. We therefore resolved this issue in favour of the appellant.

In view of the above reasons, we set aside the decision of the trial court and order for the retrial in Upper Area Court I, Ilorin.

Appeal Succeeds.

SGD	**SGD**	**SGD**
A. A. OWOLABI	S.O. MUHAMMED	A.A. IDIRS
HON. KADI	HON KADI	HON. KADI
20/07/2011	20/07/2011	20/07/2011

(28) 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 MONDAY, 27TH DAY OF JULY, 2011.

BEFORE THEIR LORDSHIP:

A.A. IDRIS - HON. KADI
M.O. ABDULKADIR - HON. KADI
A.A. OWOLABI - HON. KADI

APPEAL NO. KWS/SCA/CV/AP/IL/03/2011

BETWEEN:

1. MEDINAT
2. HAIRATU ALAMAYO - APPELLANTS
AND
JAMIU ADAM - RESPONDENT

principles:

1. - A claimant will be left alone and his case terminated if he decides not to pursue the claim anyloger.
2. The trial Area Court is bound to apply Islamic Law as Locally interpreted by Malik School.
3. The principle of res-Judicata is applicable in Islamic Law as it is applicable on other legal systems.
4. Distinguishing the plaintiff and the defendant is the first task in every litigation.
5. Judgement pronounced without (**Izar**) forther statement made before final judgement is a nullity.

STATUES/BOOKS REFERRED TO:

1. Al-Fawakihu Dawani Vol. 11 P. 220 by Sheikh Ahmad bn Gunaini Al-Azharry.
2. Al-Bahjat on Tuhfatul Ahkam by Abu Hassan Aliyu bn AbdulSalam Attasuli Vol. P 8284
3. Jawairu Iklil on Muhtasar of Sheikh Khalil Vol. 11 P9 .221
4. Ashalu Madarik on Irshadu Al-Salik Vol. 2 P. 110
5. Ihkamul-Ahkam on Tuhfatul – Ahkam P.10 by Muhammed Yusuf Al-Kafi
6. Ihkamul – Ahkam on Tuhfatu Ahkam P.24

JUDGEMENT WRITTEN AND DELIVERED BY: A.A. OWOLABI

This is an appeal against the decision of the trial Area court 1 Afon which was delivered on 17/1/2011.The respondent herein Jamiu Adamu who was the plaintiff at the trail court sued the appellants, Medinat and Hairatu Alamoyo to recover the sum of ₦31,000:00 being the expenses incurred during the period of betrothal of the 1st appellant. The 2nd appellant throughout the proceedings represented the 1st appellant. The respondent at the trial court stated that he could not remember how he arrived at the sum of money he was claiming that he had made several attempts to recover the said sum without success . He stated that, he initially reported the matter to one Oba Ologun and later laid a complaint to the police but all to no avail. He had also instituted the same claim before the Area Court Grade 1 No 2, Centre Igboro sometimes in 2010 where the court held among other things that the respondent could not recover the said sum of money because he was the one who said he was no more interested in the marriage of the 1st appellant.

The 2nd appellant denied the above stated claim but stated that initially the respondent was interested in the hand of 1st appellant in

marriage and both of them agreed to marry each other. She added "My daughter use to stay in the plaintiff's house till 12:00 midnight before she came back home. (sic) '' Thereafter the respondent resiled from the betrothal (pre- contract agreement) with the 1st appellant despite appeal to him to change his mind. The 2nd appellant admitted the sum of ₦5,000:00 and a handset which was said to cost the sum N8,000:00. She said that she had handed over the handset to one of the mediators; Oba Isegun where the respondent once laid the complaint. She affirmed that the respondent once took her to the Area court No 2 Centre Igboro, Ilorin where the claim of the respondent was dismissed.

After listening to the parties, the trial judge gave judgement in favour of the respondent that the appellants should pay the sum of N5,000:00 cash being the sum admitted and N8,000:00 being the cost of handset.

Being dissatisfied with the judgement of the trial court, the appellants filed notice of appeal containing three (3) grounds of appeal dated and filed on 22/2/2011.

The grounds of appeal are reproduced verbatim hereunder:

1. That the learned trial Judge erred in law when he entertained a case that has already been decided by Area Court 1,No.2, Centre Igboro, Ilorin.
2. That the learned trial Court erred In law when it ordered the 2nd defendant/2nd appellant to refund the sum of N5,000 and handset to the plaintiff/ respondent.
3. That the judgement of Area Court Afon is unreasonable, unwarranted having regard to the weight of evidence adduced before it.

The respondent in turn filed a notice tagged; Notice and Preliminary objection and counter appeal dated and filed on 14/4/2011.

On 5th July, 2011, when the appeal was called for hearing, one Tijani Sulaiman Esq. appeared for the appellants while Hamad Saka Esq. was for the respondent.

We observed that the respondent who filed a notice of preliminary objection did not move the court to entertain same and did not refer to same throughout the proceedings. We hold that the respondent was no more interested in the notice and same is hereby struck out on the principle that:

المدعي هو الذي لوسكت لترك على سكوته.

Meaning: 'The complainant is who will be left alone (and the matter be terminated) when ever he keeps quiet to pursue his claim. '

See **Alfawakihu Dawani by Sheikh Ahmad bun Gunain Al-azhary volume II, page 220.**

The record of proceedings of Area Court Grade 1 No. 2 Center Igboro, Ilorin was also placed before this Court which judgment was decided on 25/1/2010 in case No. 26/2010 and suit No. 22/2010.

In the course of hearing this appeal, the learned counsel to the appellants formulated 3 issues for determination; the issues are;

1. Whether the trial Area Court Afon is vested with jurisdiction to determine the case which had already been heard and determined by Area court Grade No. 2 Center Igboro and between the same parties.
2. Whether the procedure adopted by the trial court in the conduct of the case was proper.

3. Whether the respondent having withdrawn from and breached the promise to marry the 1st appellant still have the right to re-claim whatever he had spent on the 1st appellant during the betrothal period.

The learned counsel to the appellants preferred to argue the three issues together, while the summary of which is as follows;

The learned counsel while referring this court to the record of proceedings of Area Court Grade 2, No.1 Center Igboro, Ilorin which was decided on 25/11/2010 submitted that with the case at hand the subject matter and the parties are the same, therefore the same case was wrongly re- litigated upon. He further submitted that all the parties were not accorded fair hearing since the court did not give them opportunity to cross – examine each other. He referred to page 2, line18 and page 3, line 10.

He submitted that the 1st appellant did not resile from the betrothal or promise to marry the respondent; he referred to page 2, line 14. He finally urged the court to look into the issues he raised before this court and to set aside the judgement of the trial Area court No. 1, Afon in line with the rules of Sharia relating to issues of marriage.

When he was asked by the court to address the court on the relevance of the principle of **res-judicata** in Islamic law to the appeal at hand, the learned counsel said he left the matter to this court's discretion.

On the other hand, the learned counsel to the respondent adopted and aligned himself with the three issues formulated by the appellant's counsel but preferred to argue the issues **seriatim**.

On issue No. 1, the learned counsel stretched that the issue revolves around the principle of **res-judicata**, and submitted that the principle of **res-judicata** is not relevant in Islamic law as gate of

litigation is not foreclosed against parties. He referred to the decision of this Court in Anafi Aremu V Alhaji Ayuba Akanbi & Another, 2002 Annual report of Sharia Court of Appeal, Kwara State, page 1, line 10.

He concluded this point by submitting that the record of proceedings of Area Court Grade 1 No. 2 Center Igboro be expunged from the proceedings of this appeal since it was only served on him on Friday, 1/7/2011 as it sprung surprises on them. He added that no leave to his knowledge was sought or obtained before the record of proceedings was brought to this court.

On issue No. 2, he submitted that the procedure adopted by the court was good and proper and in accordance with Islamic rule of procedure. He added that the claim of the respondent was read to the 2nd appellant while the 1st appellant was represented by the 2nd appellant. He submitted that the respondent and the appellants were respectively given opportunity to present their cases. He referred this court to pages 2 and 3. He concluded that failure of the trial court to allow parties to cross-examine each other is of no significance.

On question by this court he submitted that there was no witness called by all the parties for any party to cross-examine. He added that the appellants having admitted part of the claim. Hence judgement was given only on the admitted facts. He referred to page 2 last two lines.

He concluded that this court is after substantial justice while technicality should not be allowed to pervert the cause of justice, He referred to **Salamatu Muhammad & Another Vs Sule Omobello** 1998 Annual Report of Sharia Court of Appeal Kwara State, page 115 @ 121 and **Nafisatu Abike Ote Vs Alli Ismaila Ajadi**, also reported in 1999 Annual Report of Sharia Court of Appeal, Kwara State pg11 @13. He urged this court to dismiss the appeal on that ground.

On issue No. 3, he submitted that this court if going by the submission of the learned counsel to the appellants and the evidence in the record, the court found that there was no marriage between the parties. He added that the claim of money by the respondent is recoverable by him except if he signifies his intention to forgo or abandon it as same is different from dowry or Sadaq.

He submitted that assuming but not conceding, the respondent was the one who said he was no more interested in the marriage of the 1st appellant he still has the right to claim what he had incurred on the 1st appellant since this is not issue of divorce. He finally prayed this court to resolve all the issues in favour of the respondent and to dismiss the appeal in its entirety.

After reading the entire processes before this court and listening to the submission of both learned counsel it was understood that it is a case relating to claim of expenses during the period of betrothal (pre- contract agreement) between the respondent and the 1st appellant while the 2nd appellant was the intermediary between them but the marriage did not come to fruition. We found that the three issues formulated which were agreed and argued by the learned counsel to the parties respectively could be subsumed into two issues as follows:

1. *Whether the trial Area court No.1 Afon is vested with jurisdiction to determine the case which had already been heard and determined by Area Court, Grade 1 No. 2 Center Igboro, Ilorin and between the same parties.*

2. *Whether the procedure adopted by the trial court in the conduct of the case which ended up in the award of N13, 000:00 against the appellants was proper. We will resolve these issues* ***seriatim***.

Issue No.1 is on jurisdiction. The learned Counsel to the Appellants submitted that the trial Court ought not to entertain the case since it had been litigated upon by the Area Court Grade 2 No.1 Centre Igboro, Ilorin. The case at Area Court, Grade 2, No1 Centre Igboro, Ilorin and the case on appeal are between the same parties and on the same subject matter. He cited the decision of this court in **Anafi Aremu Vs. Alhaji Ayuba Akanbi** and another (Supra) to support his submission. While the learned counsel to the respondent submitted that the principle of res-**judicata** is not applicable in Islamic Court and referred to various decisions of this court.

Point on jurisdiction once raised, needs to be resolved on the onset because it is the pivot or centre on which everything balance and turn and the pillar upon which the whole case as a building will be based. Jurisdiction is the pivot for adjudication and foundation which the whole case is based on. Where there is an appeal on the substantive matter and issue on jurisdiction is raised, the issue must first be resolved before other issues. If the issue raised on jurisdiction succeeds the entire case collapses but if it fails, the whole case would be ventilated into. We hold that the issue on jurisdiction as it relates to the point on **res-judicata** was properly raised.

Both parties agreed that there was a decided case before Area court 1 Centre Igboro between the same parties and on the same subject matter. The record of proceedings in the previous case was properly brought to form part of these proceedings. There was no challenge to the existence of the proceedings or its correctness. A substantial justice demand that such proceedings should not be overlooked as same is not meant for the dustbin.

Sharia Court of Appeal being a court of substantial justice is not restricted to a particular procedure but the court can even without being called upon to do so, consider the relevant law and document relating to the appeal and apply or rely on it to adjudicate but all

these are after all the parties had been given opportunity to react. Proceedings of previous court which throw light on present appeal are therefore relevant.

We hold that the production of the record of proceeding of Area court Grade 1 No. 2 Centre Igboro without leave of court sought nor obtained are in the course of justice. The issue of obtaining leave to produce an existing and relevant record is technical and Islamic law frowns at same. The record was properly placed before the court and needs to be looked into and compared with the record of the present case on appeal. The Court of Appeal, Kaduna Judicial Division (Sharia panel) in **Kyara Kwai, Loko V Manu Hakimi Loko** CA/K/49/5/89 on 27/5/1991 suo motu ordered for the production of copy of a judgement when one of the parties raised issues of **res-judicata**.

The parties in the case of Area Court Grade 1 No. 2 Centre Igboro, Ilorin which was delivered on 25/1/2010 are, **Jamiu Adamu Vs Eratu Iya Medinatu and Medinat**,while in the case on appeal the parties are **Jamiu Adamu of Apa Village via Afon Vs. Medinat and Hairatu Alamoyo** of Adabata, Ilorin. The claim/ the subject matter in both cases is for recovery or refund of sum of money incurred during the period of betrothal which could be equated with refund of dowry after divorce. We hold that the parties in both cases and the subject matter are substantially the same.

We opined that the bone of contention in the two cases which is the refund of what was incurred during the betrothal period is called Collateral Gift- **Hibat bil Iwad**.

The trial Area Court is bound to apply Islamic law as locally interpreted by Maliki School in accordance with Section 2 – Area Court Law, Cap. A9 Laws of Kwara State 2006 which provides that

"Islamic Personal Law has the same meaning as it has in the Sharia Court of Appeal law.''

Pursuant to Section 2 of Sharia Court of Appeal Law, Cap.S4 Laws of Kwara State 2006, Sharia Court of Appeal is to apply Islamic personal law as locally interpreted by Maliki School.

It is equally necessary that the appellate court which will decide any appeal emanating from Area Court handling Islamic personal law should apply the same Maliki law. We refer Section 14(a) of the same law which provides that;

'The court, in the exercise of the jurisdiction vested in it by this law as regards both substantive law and practice and procedure, shall administer, observe and enforce the observance of the principles of provisions of Muslim law of the maliki school as customarily interpreted at the place where the trial at first instance took place.''

We therefore need to take a stand in accordance with the fiqh of Imam Maliki and to decide whether the principle of **res- judicata** is applicable in Islamic law.

The authority of **Anafi Aremu Vs. Alhaji Ayuba Akanbi** and another (supra) and allied decisions referred to are either on review of judgement or adjournment or power to correct judgement and guide on a similar case but not on the same case.

We boldly hold that the principle of **res-judicata** is applicable in Islamic law as it is applicable in other legal Systems. The principle is among others aimed at putting an end to litigation. See **Albahjat** commentory on **Tuhfatul Ahkam by Abul- Hassan Aliyu bin Abdul-Salam Attasuli vol. I** pages 82-84.

Meaning:

Meaning'A party who has exhausted the right of adjournment shall be listened to after the expiration of the time except in the following: endowment release from marital bond, claim of genealogy, murder and emancipation

وسائل التعجيز ممن قد قضى

يمضي له في كل شيء بالقضاء

إلا ادعاء حبس أو طلاق

أو نســـب أودم أو عـــتاق

(راجع البهجة في شرح التحفة ج **1** , ص **82 – 84**)

In Islamic law, as other legal cultures, there is no general rule without some exception, it is the principle of Sharia that the principle of **Ta'jiz**, **res-judicata**, even though applicable is exempted from five matters; endowment (**hubs),** divorce **(talaq)** , legitimacy (**Nasab),** pardon for murder **(Dam),** or emancipation **(Al-itq).**

Like in Common law, the exemption to the application of the principle of **res-judicata** is that it does not apply to motion. See **UAC limited V. A.P.Z. Umengo** (1959) 111 ENLR. 30 and **J.A.Iroegbu V. Mark A. Ugbo** 1970-71 ECSLR 162 @ 163. L 3-15.

It was held by the Sharia panel of Court of Appeal that where issues, parties and subject matter are the same in both the previous case and the new case, the principle **res-judicata** applies. We refer to the decision in **Kyara Kwai Loko V. Manu Hakimi Loko** (supra) where Hon. Justice Uthman Mohammed JCA (as he then was) held.

> *'Under the Islamic Law the judgement stands as estoppels against any litigation between the parties or relations who could inherit any of the parties. The judgement is final seal against future litigation in respect of that dispute, unless if a mistake had been*

shown in the judgement through the process of review, which had not taken place here.'

See also **Yusuf Alao Lamo V. Alhaji Wahab Alao** (unreported) Appeal No. CA/K/197/89 delivered on 14/5/91.

The meaning of this doctrine is simply that if a final judgement already decided between the same parties or their privies on the same question by a legally constituted court having jurisdiction is conclusive between the parties and the issue cannot be raised again except on appeal. The rationale for this doctrine is that it is in the public interest that there should be an end to litigation. See **Balan Ayye & 1 or V. Musa Yaradua CA/K/120**s/89 of 29/5/91 by Hon.Justice Murtala Aremu Okunola JCA of blessed Memory. See also Ruxton on **Maliki Law** pages 286-288; **Jawahirul Iklil**, commentary on **Muhtasar** of Sheikh Khalil, Vol.11 at Pg 221 in the chapter of Judicial procedure .

Issue of divorce is exempted from the application of **res-judicata** and since the issue of refund is correct/equated with refund during divorce, it is equally exempted. Therefore the principle is not applicable to the case before the trial court. We hold that, the trial court has jurisdiction to entertain the claim despite the previous proceedings before Area Court Grade 1 No. 2 Centre Igboro.

We have earlier held that the issue of refund of gift at betrothal period is equated with refund of dowry in case of marriage and same is covered by the exception in the principle of **res-judicata** in Islamic law. From the above premises, the issue raised relating to jurisdiction of the trial court to entertain the matter failed. We hold that the matter was properly heard and issue one is resolved against the appellants.

On Issue No. 2, the trial court and the learned counsel to the appellants misunderstood the relevant Islamic law relating to

procedure when the trial court after it had listened to the respondent and the 2nd appellant treated them as witnesses and subjected them to cross examination while the appellants' counsel submitted that there was breach of fair hearing since according to him, the parties were not allowed to cross-examine each other. The respondent on the other hand submitted that the procedure adopted by the trial court was appropriate and in accordance with justice of the case as parties were accorded fair hearing. He concluded that judgement was for the refund of money and cost of item admitted by the appellants.

The appellant's counsel further submitted that the 1st appellant did not resile from the betrothal or promise to marry the respondent. He submitted that it is apparent in the records of the trial Court that there was no marriage between the respondent and the 1st appellant, and money paid during the betrothal is not refundable. While the respondent counsel submitted that unless the respondent forgoes such money it is claimable.

It has been held by this court and Court of Appeal in plethora of decided cases that parties are not witnesses in their respective cases. All what they stated in court was either in position of statement of claim (**البينة**) or denial (**الإنكار**) or an admission (**الإقرار**) .

In this appeal, the issues of dispute are

1. Who resile from the betrothal and for what reason?
2. The list of items claimable.

It is the position of Islamic law that items that exchange hand during betrothal period is regarded as collateral gift **(Al hibatul-bil Iwad)** There are divergent opinions of jurists of schools of law as to whether same is recoverable after the termination of betrothal or not and if it is recoverable at what condition and on what ground.

The view of Malik School of law is what was stated **in As-halul – Madarik,** short Commentary on Irshadu Al- salik vol. 2 pg.110 thus;

Meaning:

*''Whatever the man offers in addition to the dowry in form of gifts before or during the solemnization of the marriage shall be treated as **sadaq** and so is whatever is taken by custom of the people.''*

ولو شرط زيادة على الصداق فهي كالصداق يعني أنها شرط زيادة من الهداية قبل العقد أو حين العقد حكمه حكم الصداق وكذا ما جري بـه العرف. (راجع أسهل المدارك شرح إراشاد السالك أبوبكر الكشناوي ج**2**, ص**110**).

We seriously observed that the trial Court ought to request the parties to adduce evidence through witness to establish their different position as regards who vitiated the betrothal .The trial judge should ascertain what is expected to prove and how to discharge the burden of proof before decision is delivered in accordance with the following legal principle:

Meaning:"Whoever identifies the difference between the claim and the defendant has resolved the main cause of action"

من عرف بين الداعي والمدعي عليه فقد عرف وجه القضاء .

This principle was also stated in **Ihkamul Ahkam** short commentary on **Tuhfatul Ahkam page** 10 by Muhammad bin Yusu Al- Kafi, as **follows:**

"Distinguishing the plaintiff and the Defendant is the first

تمييز حال المدعي والمدعي عليه جملة القضاء جمعا

task in every litigation".

راجع إحكام الأحكام على تحفة الحكام لمحمد بن يوسف الكافي ص **10**.

It is high time that our trial courts dealing with Islamic Law matter should stop treating or allowing counsel to treat statement or denial of parties as evidence which will be subjected to cross-examination. The only exception is that the court can clarify issue(s) from parties. The court should not also overstep its bound to fall into entering into the arena.

It is after this procedure has been properly observed that parties upon who is the onus of proving a fact will call witness (es) who may be subjected to cross-examination or impeachment. **تعديل وتجريح**

This is in accord with the prophetic hadith:

The burden of proof is squarely on who asserts''

والبينة على المدعي

انظر : الفواكه الدواني ج**2**, ص**200**

It is incumbent on the judge either at trial or on appeal that before judgement is finally delivered the Judge must give the parties final chance/ opportunity to state and produce evidence in discharging the burden of proof. This was supported by the decision of Court of Appeal where it was held as follows:

> *"At the end of the party's case the court shall ask them whether they have anything more to say before the court pronounces its judgement. This is what is called **Al-iZar**, something having similarities with **alacutos**. Where a judgement is pronounced without it, it will be set aside on appeal. See page 39 "**Bajah** ", commentary on **Tuhfatul-Hukkam** where it is stated, majority view of the jurists is that judgement pronounced without it (**I'Izar**) is a nullity."*

Suleiman, representative of Ibrahim Vs. Isyaku & 2 Or.(unreported) CA/K/1426/86, delivered on 5/2/1987 by Hon.Justice A.B. Wali JCA.(as he then was.)

The Court of Appeal in the same appeal refers to above further held that

*'' the principle of **Al- Izar** in islamic law is like **allocutus** in English criminal justice which must be conducted before an accused person is sentenced and or convicted. "**Al-izar**" in Islamic Law goes beyond that. It is so fundamental that failure of the court to apply it at an appropriate time would make the decision of that court a nullity. It must be applied clearly before the decision or judgement. It enables each party to go over or ventilate its own case so that no party should say in future that he was not allowed to present his case by the court"*

See also Nasiru Alhaji Muhammed Vs. Haruna Muhammadu & 1 other (2001) 6 NWLR (pt 708)104 and Mamman dan Buhari V. Hajo Usman (unreported) CA/K/171/S/92 delivered on 30/6/94.

The procedure for the application of Al- **izar** was further stated in the book of **Ihkamul Ahkam** short commentary on **Tuhfatul Ahkam** page 24 where the author opined as follows:

''The last excuse is allowed litigants before judgement in the presence of two unimpeachable witnesses. This is the chosen view.''

وقبل الحكم يثبت الإعذار

بشاهدي عدل وذا المختار

The judge should ask the parties whether they have anything more to say or whether they have any more witnesses to call in order to give the litigant a final opportunity or chance, the court will invariably say:

"Do you have any evidence to give" " هل بقيت لك حجة تدفع بها ما ثبت عليك".

Before a valid judgement is delivered.

See **Wangara V. Tsamiyar Kara** 2006 3SCR Pt1 p168 by Hon. Justice M. S.Muntaka -Coomassie, JCA. as he then was.

> *''Before giving judgement a judge must establish the exhortion of any possible defence (**Al- izar**) by two unimpeachable witnesses. That is the chosen course''.*

This is in consonance with the common law principle of **Audi Alteram partem***" hear the other side".*

It is the duty of the trial court to investigate how the respondent came to the total sum of N31,000:00 since he said he could not remember same, the trial court needed to allow him time to recollect his memory and not to rush to judgement.

We opined that the trial court was hasty as it failed to exhaust the parties by not allowing or requesting each one to advance evidence through independence witness(es), thus resulting into a breach of fair hearing.

It is our considered opinion that the trial court was wrong to have awarded the sum of N13,000:00 against the appellants being the total sum of money and the cost of handset incurred during the

period of betrothal. The claim was not particularised and the cause of the breach of the betrothal was not investigated.

In view of the foregoing, we resolve issue No.2 in favour of the appellants. We hereby order the entire case be retried by Upper Area Court 1, Ilorin. In the end result, the appeal succeeds in part and fails in part.

SGD	**SGD**	**SGD**
A.A. OWOLABI	**A.A. IDRIS**	**M.O. ABDULKADIR**
(KADI)	**(KADI)**	**(KADI)**
27/07/2011	27/07/2011	27/07/2011

(29) IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIA
IN THE SHARIA COURT OF APPEAL OF LAFIAGI DIVISION
HOLDEND AT LAFIAGI (SHARE) ON THURSDAY 22ND SEPTEMEBR, 2011

BEFORE THEIR LORDSHIPS

A.A. IDIRS - HON. KADI SCA
M.A. ABDULKADIR - HON. KADI SCA
A.A. OWOLABI - HON. KADI SCA

APPEAL NO: KWS/SCA/CV/AP/LF/10/2011

BETWEEN

YANDANA WELDER - APPELLANT
VS
AMINA YAND'ANA - RESPONDENT

Principle:

The Appellant will be left alone if he decides to withdraw his case.

STATUES/BOOKS REFERRED TO:

- Fawakihu Dawani Vol. 2. P 220

RULING: WRITTEN AND DELIVERED BY. A.A. IDRIS

The Appellant herein Yandana Welder was sued by the Respondent, Amina Yandana before the Area Court I, Share for divorce with case No: 44/2011 of 22nd June, 2011. The Appellant was aggrieved with the procedure of the trial court and requested his case to be transferred to the court with competent jurisdiction to hear his case and filed Appeal KWS/SCA/AP/LF/10/2011 of 13th September, 2011.

On the hearing date, only one Mallam Jibril Muhammad who came to represent the Appellant that was in Court. The representative

of the Appellant submitted a letter to the court requesting for the withdrawal of the Appeal before the court.

In view of the request of the Appellant, we deem it fit to strike out the appeal. This is in conformity with the Islamic injunction which stipulates thus:-

The Appellant will be left alone if he decides to withdraw his case. **المدعى هو الذي لو سكت لترك على سكوته**

We therefore struck out the appeal.

SGD	**SGD**	**SGD**
A.A. OWOLABI	**A.A. IDRIS**	**M.O. ABDULKADIR**
HON. KADI	HON. KADI	HON. KADI
22/09/2011	22/09/2011	22/09/2011

(30) IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIA
IN THE SHARIA COURT OF APPEAL OF LAFIAGI DIVISION
HOLDEND AT LAFIAGI (SHARE) ON THURSDAY 22ND SEPTEMBER, 2011

BEFORE THEIR LORDSHIPS

A.A. IDRIS - HON. KADI SCA

M.A. ABDULKADIR - HON. KADI SCA

A.A. OWOLABI - HON. KADI SCA

APPEAL NO: KWS/SCA/CV/AP/LF/11/2011

BETWEEN

NDANA KUSOMUNU - APPELLANT

VS

AMINATU NDANA - RESPONDENT

Principle:

The Appellant will be left alone if he decides to withdraw his case.

STATUES/BOOKS REFERRED TO:

- Fawakihu Dawani Vol. 2. P 220

RULING: WRITTEN AND DELIVERED BY. A.A. IDRIS

The Appellant herein Ndana Kusomunu was sued by the Respondent Aminatu Ndana for divorce before the Area Court I, Bacita. The Appeallant was dissatisfied with the decision of the trial court of 7th July, 2011 and filed his appeal No: KWS/SCA/CV/AP/LF/11/2011.

On the hearing date, when we were about to commence the hearing a letter written by the Appellant was submitted by our

Registrars in which he informed the court that he wanted to withdraw the pending appeal due to some reasons known to him.

In view of the content of the letter sent in by the Appellant we decided to strike out this appeal. This is in conformity with Islamic injunction which stipulates thus:-

The Appellant will be left alone when he decides to terminate his case. Based on the above we struck out this appeal.

المدعى هو الذى لو سكت لترك على سكوته

The request is hereby granted.

SGD	**SGD**	**SGD**
A.A. OWOLABI	**A.A. IDRIS**	**M.O. ABDULKADIR**
HON. KADI	**HON. KADI**	**HON. KADI**
22/09/2011	**22/09/2011**	**22/09/2011**

(31) 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 THURSDAY 29TH SEPTEMBER, 2011.
YAOMUL-KHAMISES 1ST DHUL QADA 1432 A.H.

BEFORE THEIR LORDSHIPS;

I. A. HAROON - GRAND KADI

A. A. IDRIS - HON. KADI

A. A. OWOLABI - HON. KADI

APPEAL NO: KWS/SCA/CV/AP/IL/11/2011

BETWEEN:

SULEMAN OBA DIKO - APPELANT

VS

BILIKISU ABIMBOLA DIKO - RESPONDET

principle:

The plaintiff's withdrawal terminates the prosecution.

STATUES/BOOKS REFERRED TO:

1. Fawakihu Dawani Vol. 2. P 220

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

The appellant, Suleman Oba Diko filed the appeal against the decision of the Area Court 1 No 2 centre Igboro in the case No. 232/2011 delivered on the 17th August, 2011. The respondent herein is Bilikisu Abimbola Diko.

Parties are present in the court.

We ask for the proceeding, and then the appellant told us that this matter had been amicably settled. We had rejoined each other as husband and wife and they now live together with all the children.

I pray the court to strike out this matter.

Respondent: I agreed with the appellant statement that the matter had been reconciled and settled amicably.

Both parties told our court that the conflict between them had been settled right from the beginning. ab-intion they are now living together as husband and wife with their children.

On our part we have no option than to strike out the matter as prayed by the appellant.

This is in line with the court law that: The plaintiff's withdrawal terminates the prosecution.

The plaintiff is he whose silence puts an end to his case. المدعي هو الذي لو سكت لترك على سكوته .

انظر الفواكه الدواني ج2, ص 220

SGD	**SGD**	**SGD**
A. A. OWOLABI	**I. A. HAROON**	**A. A. IDRIS**
HON. KADI	**HON. GRAND KADI**	**HON. KADI**
29/09/2011	**29/09/2011**	**29/09/2011**

(32) 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 FRIDAY, 3OTH SEPTEMBER 2011

BEFORE THEIR LORDSHIPS:

I.A. HAROON - HON. GRAND KADI
A.A. IDRIS - HON. KADI
A.A. OWOLABI - HON. KADI

MOTION NO: KWS/SCA/CV/M/IL/12/2011

BETWEEN:

MRS. SHERIFAT ABDULRAZAQ - APPLICANT

VS.

ALFA ABDULRAZAQ IBRAHIM - RESPONDENT

principles:

1. Extension of time is left for the discretion of judge/court where necessary.
2. It is not proper for the judge/court to close the door of litigation in three instances involving emancipation divorce and consanguinity.

STATUES/BOOKS REFERRED TO:

- Al- Bahjah Fi Sharh At-Tuhfat Vol. 1 P. 56

RULING; WRITTEN AND DELIVERED BY: I.A. HAROON

Sherifat Abdulrazaq was the applicant in this motion while Alfa Abdulrazaq Ibrahim was the respondent; both of them were self represented. The motion on notice was brought under Order IV of the Kwara State Sharia Court of Appeal Rules, Cap 122 Laws of

Northern Nigeria 1963. It was filed on 7/9/2011. The applicant herein prays for the following orders:

i. *An order of this Honourable Court enlarging the time within which the Appellant/deffendant shall file his notice and grounds of appeal against some part of the decision/judgment in the Area court of Grade 1 No 1 Center Igboro Ilorin on 18th day of March 2011. (sic)*

ii. *And for such further or other orders as this Honourable Court may deem fit to make in the circumstances.*

The motion was supported by 10-paragraph affidavit sworn to by the applicant as the deponent together with Notice and Grounds of Appeal annexed therein.

On 29th September 2011 when the motion came up for hearing before us, the applicant gave the reasons for her delay to file the appeal within the stipulated time she said it was due to her interest in reconciliation which did not materialize.

She also told us that she was sick immediately after the dissolution of her marriage with the respondent. She urged the court to grant her application for enlargement of time within which to appeal against the decision of the trial Area Court 1, No. 1, Centre Igboro, Ilorin. She promised to pursue the appeal diligently if her application is granted.

The respondent in his statement told the court that all the reasons given by the applicant for her failure to file the appeal within the stipulated time were not true. He said that the applicant was never sick and stressed this by telling the court that he used to pay visit to his children under her custody and she did not complain any ill health. He urged the court to discountenance with the statements of the applicant and to refuse the prayers.

After careful perusal of the court processes before us and having listened to the parties before us, it is our well considered view that the main issue for determination before us is whether the applicant in the instant application deserves our favourable consideration or not. By our law, granting an application of this nature falls under the discretionary power of the court. See ***al-Bahjah fi Sharh at-Tuhfah, Vol. I, p.56*** which reads thus:

ولاجتهاد الحاكم الآجال **** موكولة حيث لها استعمال

Extension of time is left for the discretion of judge/court where it is required.

We also took the judicial notice that the respondent did not file a counter affidavit; the implication of this is non-objection to the application of the applicant on the part of the respondent and we so hold.

As a matter of fact, the reasons adduced by the applicant were fragile, flimsy and mere excuses that may not warrant our favourable consideration if not for the provision of Islamic Law that gave three exceptional circumstances where the door of litigation shall not be closed against the litigants. These circumstances center on emancipation, divorce and consanguinity. The law reads thus:

ولايجوز للقاضي أن يعجز في ثلاثة أشياء: العتق والطلاق والنّسب

It is not proper for the judge/court to close the door of litigation in three instances involving emancipation, divorce and consanguinity

We shall strictly apply the above law on the instant application. Thus the application of the applicant in the motion filed on 7/9/2011 at the registry of our court for an enlargement of time within which the applicant can appeal out of time is hereby granted. The applicant

is to file the appeal within two weeks with effect from today Friday, 30th September 2011.

The application succeeds.

SGD	**SGD**	**SGD**
A.A. OWOLABI	**I.A. HAROON**	**A.A. IDRIS**
HON. KADI	**HON. GRAND KADI**	**HON. KADI**
30/09/2011	**30/09/2011**	**30/09/2011**

(33) IN THE SHARIAH COURT OF APPEAL OF KWARA STATE OF NIGERIA
IN THE SHARIAH COURT OF APPEAL IN THE ILORIN JUDICIAL DIVISION
HOLDEN AT LAFIAGI ON TUESDAY 4TH OCTOBER, 2011

BEFORE THEIR LORDSHIPS:

I. A. HAROON - HON. GRAND KADI

A. A. IDRIS - HON. KADI

M. O. ABDULKADIR - HON. KADI

APPEAL No. KWS/SCA/CV/AP/LF/06A/2011

BETWEEN:

YAMUSA NDAGI BA'A - APPLICANT

VS

FATIMA SA'AGI YANUSA - RESPONDENT

Principle:

An Appellant can interfere with the proceedings os a trial Area Court. The court should not allow technicalities to deny the substantial justice.

STATUES/BOOKS REFERRED TO:

1. Section 10 (2) of SCA Laws
2. Section 10 (2) of SCA Law & Cap 84 of Kwara State Laws.

RULING: WRITTEN AND DELIVERED BY A.A. IDRIS

This motion on notice was dated and filed on the 6th July, 2011 by O.K. Ayinde counsel to the applicant. The motion was brought pursuanct to section 10(2) of the Sharia Court of Appeal Laws Cap S.4, Laws of Kwara State which is within the inherent jurisdiction of this court. Seeking for:-

a. An order substituting the word Guardian for Custody

wherever it appears in the record of the lower court.

b. *An order amending the grounds of appeal in line with the attached schedule of amendment.*

c. *Such other or further orders as the honourable court may deem fit to make in the circumstance.*

Attached with the motion are grounds of appeal, schedule of amendment and verifying affidavit in support of the appeal.

When the motion came up for hearing before this honourable court on the 27th September 2011, the counsel to the applicant introduced his motion and sought the court to substitute the word 'guardianship' for 'custody' and finally requested the court to amend the grounds of appeal in conformity with the attached schedule of amendment.

In his response, M.N. Dangana the counsel to the respondent urged the court to discountenance the application filed by his learned friend. He further asserted that the application was incompetent and urged the court to throw the application into the dust bin. He explained further that he had filed a counter affidavit for the perusal of this court.

Coming to the issue of amendment, the counsel to the respondent stated that the word 'guardian' was never argued in the lower court and that the issue before the lower court was the case of allowing the respondent to marry a man of her choice. He elaborated further that it was this issue that brought about the issue of custody. He went further to explain that the respondent was ordered to follow her parent home for reconciliation and the respondent obeyed the court order. But to their surprise, when they reached home, the respondent was maltreated and forced into marriage against her wish and for this singular action of the appellant he was convicted for

contempt of court and kept in detention at the Lafiagi Federal Prison. He elaborated further that this episode gave birth to the issue of custody. Thus, the issue of who would then take the custody of the respondent to avoid further maltreatment arose. He asserted further, that in order not to render the court helpless in such a situation, the court awarded the custody of the respondent to the Emir of Lafiagi. The respondent's counsel illustrated further that the issue of guardianship did not arise at all because the pending issue had not been determined by the lower court. He was of the opinion that the appellate court would not permit issues and facts that were not supported by the record of proceedings of a trial court. He then referred the court to the case of **Muhammad Jiwo Vs Alhaji Shehu, 1992 (8) Nigeria Weekly Law Report at page 130 particularly P. 130-131.** He finally urged this honourable court to throw out the application filed by his learned brother for being frivolous, malicious and fictitious.

In his brief response, the counsel to the applicant maintained that the application brought before this honourable court was in conformity with **Section 10(2) of Sharia Court of Appeal Laws.** He therefore urged the court to discountenance the submissions of his learned friend.

Having listened to the submission of the learned counsel on both sides and having read the record of proceedings and ruling of the trial court that gave birth to the controversy over the use of terminology, we resolved that the only issue for determination is as follows:-

On the issue which is the question whether the amendment can be done or not, we are of the opinion that **Section 10(2) of Shariah Court of Appeal Laws and Cap 84 of Kwara State Laws** quoted by the applicant's counsel conferred the power to amend any proceeding of the trial court on this court for the purpose of

elucidating and enhancing justice. **Section 10(2) of Shariah Court of Appeal Laws** stipulates thus:

> *For all the purposes of and incidental to the hearing and determination of any appeal and the amendments, execution and enforcement of any judgment, order or decision made herein the court shall have all the powers, authority or jurisdiction of every Area Court of which the judgment, order or decision is subject of an appeal to the court without prejudice to the generality of the foregoing shall have all the powers conferred upon Area Courts exercising appellate jurisdiction under any Area Court Law.*

Whether this court has the power to amend the proceedings of the Lower Court where necessary, such as substituting the word guardianship with the word custody or vis-visa.

Going by the above quotation we observe that it is law that an appellate court can interfere with the proceedings of a trial Area court. We therefore grant the request of the applicant in this respect but whether it is done or not is of no momentous consequence whatsoever in view of the original statement of claim and its efficacy to the issue at stake. Therefore we should not allow technicalities to becloud our sense of judgment.

Application succeeds.

SGD	**SGD**	**SGD**
M.O. ABDULKADIR	**I.A. HAROON**	**A.A. IDRIS**
HON. KADI	HON. GRAND KADI	HON. KADI
4/10/2011	4/10/2011	4/10/2011

(34) 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, 4TH OCTOBER 2011

BEFORE THEIR LORDSHIPS:

I.A. HAROON - HON. GRAND KADI

A.A. IDRIS - HON. KADI

M.O. ABDULKADIR - HON. KADI

MOTION NO: KWS/SCA/CV/AP/LF/09/2011

BETWEEN:

HALIMATU WOYE SHA'ABA - APPELANT

AND

ALHASSAN SHA'ABA - RESPONDENT

Principle:

Any matter that has not been decided upon by the trial Area Court can not be appealed against.

STATUES/BOOKS REFERRED TO:

- Fawakihu Dawani Vol. 2. P 220

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

Halimatu Woye Sha'aba, the appellant, was the plaintiff at the trial Area Court I, Lafiagi. She sued Alhassan Sha'aba, the respondent who was the defendant at the trial court for lack of maintenance of the issues of their dissolved marriage, and to claim some items and debt. When the matter came up for hearing at the trial court on 24th June 2009, the respondent denied the claims. The trial court then adjourned the matter to the following dates 2nd July 2009, 13th July 2009 and 16th July 2009 respectively.

On the adjourned date, the trial court ruled on the matter by transferring it to the Upper Area Court, Lafiagi because of the items that are criminal in nature and asked the parties to report at the Upper Area Court, Lafiagi on 27th July 2009.

On 20th September 2011 when the matter appeared before us, we drew their attention to the ruling of the trial Area Court which transferred the matter to the Upper Area Court, Lafiagi while the parties did not object to the verdict of the trial Area Court.

It is our considered view that since the matter has not been decided upon by the trial court it cannot be appealed against, more so that the parties did not object to the transfer ordered by the trial court. The parties were confused otherwise they ought to have gone to the Upper Area Court, Lafiagi instead of filing the matter in our court.

In the light of the above, the matter is hereby returned back to the Upper Area Court, Lafiagi as ordered by the Area Court I, Lafiagi in its ruling of 16th July 2009 in Suit/210/93/09 and Case/210/18/09.

SGD	**SGD**	**SGD**
A.A. OWOLABI	**I.A. HAROON**	**A.A. IDRIS**
HON. KADI	**HON. GRAND KADI**	**HON. KADI**
04/10/2011	**04/10/2011**	**04/10/2011**

(35) IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIA
IN THE SHARIA COURT OF APPEAL OF PATEGI DIVISION
HOLDEND AT PATEGI, ON TUESDAY 6TH DECEMBER, 2011

BEFORE THEIR LORDSHIPS

A.A. IDIRS - HON. KADI SCA
M.A. ABDULKADIR - HON. KADI SCA
A.A. OWOLABI - HON. KADI SCA

APPEAL NO: KWS/SCA/CV/AP/PT/04/2011

BETWEEN

LADAN CHECHE - APPELLANT
VS
MARYAM CHECHE - RESPONDENT

Principle:

Appelant will be left alone when decides to terminates his case.

STATUES/BOOKS REFERRED TO:

- Fawakihu Dawani Vol. 2. P 220

RULING: WRITTEN AND DELIVERED BY. A.A. IDRIS

This is an appeal against the decision of the Area Court Grade I Lafiagi. The Appellant was sued by the Respondent for divorce in case No 82/22 of 5th July, 2011. The record of proceedings was forwarded to this court but before the hearing date a letter dated 5/12/2011 was written and sent to the court by Tunji Sogo Esq., a legal practitioner in the Chambers of Adekanle Bamidele and Co. known as Liberation Chambers. Part of this letter stipulates thus:-

> *We most humbly regret to inform you that we shall not be able to put up appearance for our client due to the fact that all the counsel in our office have already been assigned to various High Courts within and outside Ilorin*

particularly S.A. Bamidele Esq who is suppose to appeal for our client as scheduled is slightly indisposed.

It is in the light of the above that we are intimating your Lordships that it will be practically impossible for us to appeal as scheduled.

Tunji Sogo
Signed

On the hearing date before us both parties were absent but the Appellant submitted a letter dated 2nd December, 2011 to the Registrar in charge of Patigi Division requesting the court to strike out his case and went further to state thus……..

because our parents called both of us for settlement and we agreed with each others. (Sic)

In line with the contents of this letter, we opined that it is part of the duty of any court to encourage reconciliation and since their disputes had been settled amicably, the court has nothing to do than to strike out the appeal. And above all, the Islamic injunction maintains thus:

"The Appellant will be left alone when he decides to terminate his case".

المدعي هو الذي لو سكت لترك على سكوته.

The appeal is therefore struck out.

SGD	**SGD**	**SGD**
A.A. OWOLABI	**A.A. IDRIS**	**M.O. ABDULKADIR**
HON. KADI	**HON. KADI**	**HON. KADI**
06/12/2011	**06/12/2011**	**06/12/2011**

(36) IN THE SHARIA COURT OF APPEAL KWARA STATE OF NIGERIA
IN THE SHARIA COURT OF APPEAL OF PATIGI JUDICIAL DIVISION
HOLDEN AT PATIGI ON TUESDAY 6TH DAY OF DECEMBER, 2011.
5TH RAJAB 1432AH

BEFORE THEIR LORDSHIPS:

S.O. MUHAMMAD - HON. KADI

M. O. ABDULKADIR - HON. KADI

A. A. OWOLABI - HON. KADI

APPEAL NO: KWS/SCA/CV/AP/PTG/O3/2011.

BETWEEN:

IDRISU IBRAHIM - APPELLANT

AND

NDAMAKUN MAMA JIYA - RESPONDENT

Principles:

1. There is no legal marriage except through guardian, payment of dowry and two unimpeachable witnesses.
2. Any woman who marries without the consent of her marriage guardian, the said marriage is (Void) repeated tree times.
3. We accord priority to preference in guardians to her son then the son's son, the father, then the brother, and the brother's, son, then the grandfather, then uncle, and the uncle's son preference is given to a blood relation of perents then the judge, then general authority.
4. The right of marriage guardianship shall transfer to the distant relation guardian, or when the close relation guardian stands on the way of the woman from getting married or present her to get married.

5. If somebody you approve of his religion and his character seek the hand in marriage of your ward grant him the consent otherwise there will be kiosk on land and a wild spread of atrocities.

STATUES/BOOKS REFERRED TO:

1. Quran 4:26
2. Taqribul – Ma'ani p. 170
3. Ihkamul – Ahkam on Tuhfatul Hukkam by Abdul-Hassan Aliyu bn AbdulSalam Attasuli P. 79.
4. Fatihu Raheem by Muhammed bn Ahmad Vol. 2 P.35
5. Q24:33
6. Kitabul – Fiqh Al – Mashabi Arba'a by Sayid Sabiq vol. IV P. 31 -32 k Vol .III P. 197
7. Fathul- Raheem vol. 2 p 41 by Muh bn Ahmed.
8. Al-Qawanini Fiqhiyyah P. 158 – 159 by ibn juzyi
11. Ashalul – Madarik Vol. 2 P. 71 by Abubakar bn Hassan
12. Bidayatul – Mujtahid Wa Nihayatul – Muqtasid Vol. 2 Pgs 14 – 15, By bin Rushd.

JUDGMENT WRITTEN AND DELIVERED BY A. A. OWOLABI

This is an appeal against the decision of Area Court Grade I Patigi which was delivered on 27/4/2011.

The fact of the matter is that the appellant, the father of Ramatu put her -(Ramatu) under the care of Fatima Ndamakum; (PW3) his uterine sister who is the wife of the respondent. The appellant alleged that the respondent married out his daughter, Ramatu, without his consent and refused her to complete her education.

The respondent denied the allegation and stated that it was The Etsu of Patigi that gave Ramatu out in marriage after persuading her father (the appellant) to give consent but to no avail. That after Ramatu had completed primary school, she opted for marriage but the appellant refused to give consent to her marriage. He confirmed that the matter was reported to the Etsu of Patigi who later put Ramatu in Islamiya College but she refused to stay and later opted to be apprenticed to a tailor. She completed the training and she further sought for consent of the appellant for marriage. The appellant refused to consent. The Etsu of Patigi directed that the marriage be solemnized after informing the appellant who still remained adamant.

The appellant was not happy with the marriage, hence filed a suit before the Area Court Grade 1 Patigi praying that the marriage between Adama Isa and Ramatu be annulled.

The appellant called four witnesses as follows; (1) Ramatu Idrisu, 25 years old the daughter of the appellant who narrated her own story and concluded that she was not interested in furthering her education but wanted marriage. She sent representatives to the appellant who refused to give consent. She added that it was the Etsu of Patigi who informed her parents about the marriage after her father had refused to give his consent. She concluded that it was the Etsu of Patigi who later instructed the marriage be solemnized and not the respondent. Ibrahim Baba, the second witness gave evidence that Ramatu refused to further her education but preferred marriage. The Etsu of Patigi was involved and he sent the message to the appellant. Fatima Ndamakum, the wife of the respondent who is the uterine sister of appellant was the third witness. She stated that it was the Etsu of Patigi who directed the marriage between Fatima and Adamu and not the respondent. Muhammed Ibrahim who is the elder brother of the appellant was the first and the last witness. He gave evidence that Ramatu was asked to go to school but she

refused and opted for marriage. The appellant rejected that proposal and insisted that she had to go to school. The Etsu of Patigi was informed and in order to pacify the parent, the Etsu of Patigi put her in an Islamiya College, but she told the school principal that she was not interested. The Etsu of Patigi invited the appellant and informed him of Ramatu's decision. The appellant requested the Etsu of Patigi to put her under the apprenticeship of a tailor since she did not want to go to school but preferred marriage. The Etsu of Patigi put her in tailoring institute and she eventually graduated from the institute.

After the training, the Estu of Patigi sent message to the appellant that Ramatu had completed her apprenticeship thereafter, freedom and marriage day had been fixed. He concluded that the marriage was conducted by PW3 under the instruction of the Etsu of Patigi.

The respondent called one witness Makama Wuya. He narrated the effort made by the Etsu of Patigi to put Ramatu in School but that she refused. The Etsu of Patigi later put her under the apprenticeship of a tailor. After the training, Ramatu insisted to get married and the appellant was informed but refused the proposal. When the appellant refused to consent to the marriage, the Etsu of Patigi gave instruction for the marriage.

After hearing both the parties and their witnesses, the trial court affirmed the marriage between Adamu Issa and Ramatu.

The appellant being dissatisfied with the judgment of the trial court, filed an appeal by Notice of Appeal dated 16th May, 2011 with three (3) grounds of appeal. The grounds which are devoid of particulars in the Notice of Appeal are as follows:

1. *That the decision of the trial Area Court Patigi is unreasonable unwarranted and cannot be supported because there was no fair hearing.*

2. *That the trial court misdirected itself by not dissolving the marriage and awarding my daughter to the respondent.*
3. *That the court did not give me the opportunity to defend my self in view of this I urge this honourble court to set aside the lower court decision and award custody of my daughter in my favour.*

Before us, the appellant gave the genesis and background of the fact as follows, that his daughter was living with his uterine sister, who is the wife of the respondent.

He submitted that he was not happy with the judgment of the lower court for not dissolving the marriage between her daughter Ramatu and Adamu Issa. The only reason stated before the trial court and before this court for his request was that the respondent did not allow Ramatu, her daughter to complete school before marrying her to Adamu Issa and the marriage was without his consent.

He submitted that in Islam and Nupe culture, it is the biological father of a girl that has the right to give out his daughter in marriage. No other person has such right except with his permission. He lamented that he objected to the act of the respondent because he wanted his daughter to further her education.

He further explained that the matter was reported to the Etsu of Patigi who listened to the parties and found that the girl did not want to go to school then enrolled her in one Islamiya College but she left the school. He admitted that the marriage was five (5) months old.

He finally prayed that the judgment of the trial court be set aside and the marriage be annulled.

The respondent in reply stated that, the name of Ramatu's husband is Adamu Issa and the marriage was five (5) months old.

He accepted that PW3 Fatima is his wife while Ramatu stayed with them before she was married out by the Etsu of Patigi. He stated that he was not the one that married Ramatu out but the Etsu of Patigi after the girl had completed Primary School and stayed idle for four (4) years. He added that as Ramatu refused to further her education then Adamu's parents approached him and her parents to marry Ramatu. Her parents refused on the ground that Ramatu must continue her education.

The matter was reported to the Etsu of Patigi who later put her in Islamiya College but she refused to attend as she opted to be apprenticed to a tailor. After completion of the apprenticeship, Adamu's parents further went to the Etsu of Patigi to seek for Ramatu's hand in marriage and the appellant was informed of the matter but the Appellant was adamant. The Estu of Patigi directed that the marriage be conducted between Ramatu and Adamu while the respondent was requested to act as representative of the guardian (wali) of the parents.

He urged us to affirm the judgment of the trial court. The appellant further replied that as the father of Ramatu, he wanted to claim his daughter.

Viewing the record of proceedings vis-a-vis the oral submission of both parties, before us we concluded that the only issue which is germane to this appeal is as follows;

Whether by the circumstances of this matter the marriage between Ramatu and Adamu Issa could be annulled.

The general principle of Islamic law and jurisprudence is that guardianship in marriage is an integral part of the pillar of **sunni** marriage and essential for the validity of any marriage.

It is undisputed fact that the appellant; the father of Ramatu (the ***waliyul-mujbir)*** who has the right of compulsion in marriage is still alive, hail and hearty. See the Holy Quran 4:26 where it is stated

Meaning:

''Marry them with the leave of their parents. (Qur'an 4:26)''

"فانكحوهـن بإذن أهلهن"

(سورةالنساء آية 26).

This position was emphasised by this court in the following judgements; Jimoh Adigun vs. Awawu Ajika & Oba Owolabi reported in 1995 Sharia Court of Appeal Kwara State Annual Report 17 @ 25 where it was held as follows;

"Principle of law in **Taqribul Ma'ani**, page 170 which says:-

Meaning:

''There is no legal marriage except through guardian, payment of dowry and two unimpeachable witnesses''

لا نكاح إلا بولـي وصداق وشاهدي عـدل.

(راجع تقريب المعاني (ص) 180)

And in **Fatimo Igboo & Anor Vs. Baba Ogun Reported In 1997 Sharia Court Of Appeal Annual Report 133 @ 136-137.**

''The issue of marriage guardianship is one of the condition for its validity. Maliki law of jurisprudence stipulated that "there is no marriage without guardianship. It is an essential condition which goes to the root of marriage contract.''

It was narrated that the Prophet Muhammed [SAW] said

Meaning:

''Any woman who marries without the consent of her marriage guardian, the said marriage is (void), repeated tree times. ''

قال رسول الله صلى الله عليه وسلم : " أيما امرأة نكحت بغير إذن وليها فنكاحها باطل ثلاث مـرة " .

The guardianship in marriage in Islamic law is categorised as (1) Guardianship with the right of compulsion (Wilayatul Ijbar) and (2) Guardianship without the right of compulsion (Wilayatul Nadb).

We refer to the decision of the Court of Appeal Jos division Sharia session in the unreported judgement of Adama Gidado VS. Musa Mohammed Yola CA/J/21s/91 delivered by Uthman Mohammed, PJ (as he then was) …@ 33-34.

> *"I find it relevant to explain the Islamic law provision on guardianship in order to give a clear picture of its implications. Guardianship in marriage falls under two categories in respect of the ward, according to the classical Sharia tenets:*
>
> *(i) Guardianship with the right of compulsion (Wilayatul Ijbar) is exercised over a person of no or limited legal capacity wherein the guardian may conclude marriage contract which is valid and takes effect without the consent or acceptance of the ward;*
>
> *(ii) Guardianship without the right of compulsion (Wilayatul Nadb) is exercised when the woman, whether a virgin or previously married, possesses full*

legal capacity, but in difference to social customs and traditions, delegates the conclusion of her marriage to a guardian.

The general consensus of jurists is that the woman shall not conduct her own marriage contract whether she is a virgin or previously married, even when she possesses full legal capacity. According to the sunni schools marriage guardians shall be agnates (Asaba) in the following order:

i. *Descendants i.e the son and the son's son how low so ever.*
ii. *Ascendants i.e. the father and grandfather how high so ever.*
iii. *The full brothers and the agnate brothers and their male descendants how low so ever.*
iv. *The agnate uncles and their sons.*

In the absence of the agnates, guardianship shall be vested in relatives according to proximity, otherwise it shall be vested to the Hakim, the head of state or his representative or a judge or any responsible Muslim. It should be observed that other persons could only be resorted to where there is no agnate to take the position''

See also Ihkamul **Ahkam a short commentary on Tuhfatul Hukkam by Abul- Hassan Aliyu bin Abdul-Salam Attasuli** at page 79.

We also refer to the unreported judgement in Karimatu Yakubu & Anor. VS. Alhaji Yakubu Tafida Paiko & Anor. CA/K/80s/85 delivered on 11 th December, 1985 by Uthman Mohammed JCA (as he then was) p18 Kaduna Judicial Division (Sharia Session) where it was held

''One conclusion on which there is a consensus of opinion in the Maliki school of law is that a father has a right to compel his virgin daughter in marriage without her consent and even if she has attained puberty, but if he consults her that would be most desirable. This is the view of the RISALAH which provides:

''A father has the right to give his virgin daughter in marriage without her consent even if she has attained puberty but he may consult her if he so wishes.''

Also in Bahjah, vol. 1 page 208, it has been provided that it is desirous for the father to consult his daughter, if she reaches the age of puberty (generally accepted to be 14 years) in order to find out whether she is agreeable to the marriage.

The consultation is regarded under the law of marriage as a rewarding exercise. The text provides as follows:

"It is desirable for a father to seek the consent of his daughter who has attained puberty when he is giving her out in marriage. Such consultation should be through a person the girl does not feel shy of.''

……..

The learned counsel for the Appellant referred to a decided case from the decision of the Sharia Court of Appeal, Sokoto. The case was of Alhaji Isa Bida vs. Baiwa

the daughter of Alhaji Isa Bida, Appeal No. SCA/NWS/CV/47/70 delivered on the 19th March, 1971 where the Sharia Court of Appeal held as follows:-

(1) "There can be no right of Ijbar, after the father, having considered his daughter to be mature enough to decide things for herself, allowed that daughter to chose a husband.''

(2) "The mere fact that a relative of a suitor had leprosy it could not disqualify a suitor who is healthy.''

(3) "A wife is permitted to waive her claim of equality to a husband.''

(4) "A father has the right not to complicate matters where his Daughter is trying to get married.''

We also refer to the decision of this court in Ramatu Baba VS. Alh. Mustafa Alumu reported in 1994 Kwara State Sharia Court of Appeal Annual Report Page 31 @39-41.

Islamic law further lays down a guiding principle where there is competition between categories of guardians in the book of Fathul **Raheem** by Muhammad bin Ahmad vol. 2 at p35

ويقدم في الولاية ابنا فابنه فأب فأخ فابنه فجدّ فعمّ فابنه فيقدم الشقيق فمولى فكافل فحاكم فولايــة عامـة.

(فتح الرحيم على فقه الإمام مالك بالأدلـة لمحمد بن أحمد).

***Meaning**: "We accord priority to/preference in guardianship to her son then the son's son, the father, then the brother, and the brother's son, then the grandfather, then uncle, and the uncle's son. Preference is given to a blood relation of parents then the Judge, then general authority."*

The appellant who is the father of Ramatu has the first right of guardianship (wali) and to give consent to the marriage of his daughter, Ramatu.

The appellant from the available fact refused to give consent to Ramatu to marry but insisted on education, but when the Etsu of Patigi was involved he put her first in Islamiyah College without success and ultimately under apprenticeship of a tailor in accordance with the condition precedent for consent laid down by the appellant.

Since Ramatu had fulfilled the condition precedent, it was expected that the appellant had no option but either to consent or for another person to give consent. It was not proper for the appellant to thereafter refuse his consent, the holy Quran states;

(ولا تكرهوا فتياتكم على البغاء إن أردنا تحصنا لتبتغوا عرض الحياة الدنيا ومن يكرههن فإن الله من بعد إكراههن غفور رحيم) سورة النور 33.

Meaning*:''But force not your maids to prostitution when they desire chastity, in order that ye may make a gain in the goods of this life.*

But if anyone compels them, yet, after such compulsion, God oft-forgiving, most merciful (to them).'' Quran 24:33

"وسبب الآية أن عبدالله بن أبي سلول المنافق كان له جاريتان فكان يأمرهما بالزنا للكسب منه وللولادة ، ويضربهما على ذالك ، فشكتا ذلك إلى النبي (صلى الله عليه وسلم) فنزلت الآية

Meaning*:'The cause of revelation of this verse was that Abdullah bin Salulu (munafiq) had under his custody two wards, he was encouraging them to prostitute for money and bear children for him from the*

exercise and sometimes for that beat them. The two wards reported to the prophet peace be upon him, hence the verse was revealed abhorring the act.''

. "....

In view of the above authorities, in case where any of the fathers or any of the agnate relation refuses to give consent to marriage of his daughter or ward and it was found that the girl wants marriage, the only option is for the authority to order for such marriage to be conducted. This is the position as opined in the book of **kitabul Fiqh ala Madhahibil-ar'ba'** by Sayid Sabiq volume IV pages 31-32 where it was stated as follows:

***Meaning**: ''The right of marriage guardianship shall transfer to the distant relation guardian, or when the close relation guardian stands on the way of the woman from getting married. or prevent her to get married*

وينتقل الولاية للأبعد غيبة الأقرب أو عضله إياها (أي منعها من الزواج).

راجع كتاب الفقه على المذاهب الأربعة للسيد السابق ج 4 ص 32–31.

See also of Fathul Raheem by Muhammad bin Ahmad vol. 2 at P41.

According to Ibn Juzyi in the book of Alqawaninul-Fiqhiyya he said at page158

Meaning:*''But the authority can order for marriage of an adult girl*

قال ابن جزي في القوانين الفقهية :

وأما السلطان فيزوج البالغة عند عدم الولي أو عضله أو غيبته ولا يزوج هو.

in the absence of blood guardian or his recalcitrant but where a guardian could not be found will not personally conduct the marriage.''

Also at page 159 it was stated as follows;

قال ابن جزي : الفرع الرابع: إن عضل المولي المرأة أمره السلطان بإنكاحها فإن امتنع زوجها السلطان، وذلك إذا دعت إلى كفء، وبصداق مثلها.

***Meaning**: ''The fourth class: if a guardian to a girl withhold his Authority the emir will order him to conduct the marriage but if he insist, the emir will order the marriage where there is equality between the couples and with equivalent dowry ''*

See also the book of Ashalul Madarik by Abubakar bin Hassan Al-Kaashinawi, vol. 2 at page 71.

We hold that it is Maliki view that where a lady finds the need to get married for either of her impoverishment status or fear of chastity and the biological father is in far distante place or recalcitrant to give consent to her marriage, the girl can be married by a distance body including the authority. See **Bidayatul Mujtahid Wa nihayatul Muktasid** by Ibn Rushd volume 2 pages 14 and 15 where it was stated as follows;

(المواضع الرابع: في عضل الأولياء)

واتفقوا على أنه ليس للولي أن يعضل

***Meaning**:''Lesson 4 in respect of recalcitrant guardian: It was agreed that it is not proper for a guardian to*

وليته إذا دعت إلى كفء وصداق مثلها وإنها ترفع امرها إلى السلطان فيزوجها ماعدا الأب.

withhold his consent when the girl produce an equal capacity and in return with equivalent dowry but in case of refusal to give consent the girl will now refer her complain to the authority. The Authority will now conduct the marriage irrespective of the father's consent.''

The holy prophet peace of Allah be upon him has advised the Muslin **ummah** not to unnecessarily withhold consent in marriage, he advised as follows:

(وعن أبي هريرة قال: قال رسول الله صلى الله عليه وسلم: " إذا خطب إليكم من ترضون دينه وخلقه فزوجوه إلا تفعلوا تكن فتنة في الأرض وفساد عريض") . رواه الترمذي .

***Meaning**: "On the Authority of Abi Hurairat, may Allah be pleased with him who said: the holy prophet (SAW) said: if somebody you approve of his religion and his character seek the hand in marriage of your word grant him the consent otherwise there will be chaos on land and a wild spread of atrocities. Narrated by Tirmithi.''*

From the above premise, since Ramatu Idris has completed her apprenticeship under a tailor and graduated despite that she did not want to go to formal school; she has fulfilled the condition precedent laid down by the appellant to grant her consent to marry. Appellant is not expected to be blowing hot and cold at the same time.

Also, since the Appellant vehemently refused to grant consent to Ramatu to marry without any just cause, it was appropriate when Ramatu reported the matter to the Etsu of Patigi who in turn made Ramatu to attend and to under go apprenticeship under a tailor. There was no evidence from the appellant that the respondent was the one that married out Ramatu to Adamu Issa, except that he stood in for Etsu of Patigi. The Etsu of Patigi was right to have directed the respondent to act as the guardian (wali) for marriage between Adamu Issa and Ramatu Idiris. The marriage between Adamu Issa and Ramatu Idris conducted by the authority of the Etsu of Patigi was proper and correct and same could not be vitiated. Hence, the judgment of the trial Area Court Grade 1 Patigi is hereby affirmed.

Appeal dismissed.

SGD	**SGD**	**SGD**
A.A. OWOLABI	S.O. MUHAMMAD	M.O. ABDULKADIR
HON. KADI	HON. KADI	HON. KADI
6/12/2011	6/12/2011	6/12/2011
5/7/1432 AH	5/7/1432 AH	5/7/1432 AH

(37) 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 WEDNESDAY 7TH DECEMBER, 2011.

BEFORE THEIR LORDSHIPS:

I. A. HAROON - GRAND KADI
A. A. IDRIS - HON. KADI
S. M. ABDULBAKI - HON. KADI

MOTION NO: KWS/SCA/CV/M/IL/13/2011

BETWEEN

ALHAJA HASANAT AJOKE - APPLICANT

VS

ALHAJI ABDULAZEEZ ISIAQ - RESPONDENT

principle:

The Applicant will be left alone if he decides to withdraw his case.

STATUES/BOOKS REFERRED TO:

- Fawakihu Dawani Vol. 2. P 220

RULING : WRITTEN AND DELIVERED BY I. A. HAROON

Parties are Present.

This matter was a divorce case which was dissolved in the lower court.The applicant I was the one who brought the matter to this court. But the matter had been settled at home between our parents. I pray the court to strike out the matter by way of withdrawal. The respondent agreed that there are moves to settle the matter.

The Applicant told us that she was the one who initiated the matter and she is willing to withdraw the motion. The respondent confirmed that there are moves to settle the matter at the family level.

In the above circumstance, the pplicant according to the Shariah is he whose withdrawal of a matter from the court puts an end to Litigation.

The matter is accordingly withdrawn and therefore struck out.

SGD	**SGD**	**SGD**
S. M. ABDULBAKI	**I. A. HAROON**	**A. A. IDRIS**
HON. KADI	**HON. GRAND KADI**	**HON. KADI**
07/12/2011	**07/12/2011**	**07/12/2011**

(38) IN THE SHARIAH COURT OF APPEAL OF KWARA STATE OF NIGERIA
IN THE SHARIAH COURT OF APPEAL OF SHARE JUDICIAL DIVISION
HOLDEN AT SHARE ON THURSDAY 8TH DECEMBER, 2011.
YAOMUL-KHAMIS 13ST MUHARAM 1432 A.H.

BEFORE THEIR LORDSHIPS:

I. A. HAROON	-	**GRAND KADI**
A. A. IDRIS	-	**HON. KADI**
S. M. ABDULBAKI	-	**HON. KADI**

MOTION NO: KWS/SCA/CV/M/SH/02/2011

BETWEEN:

RUKAYAT MURITALA	-	APPLICANT
VS		
MURITALA YAKUBU	-	RESPONDENT

principles:

(1) Extension of time is left for the discretion of judge court where required.

(2) It is not proper for the judge/court to close the door of litigation in three instance involving emancipation, divorce and consanguinity.

RULING: WRITTEN AND DELIVERED BY I. A. HAROON

The applicant Rukayat Muritala filed this motion on notice. against the decision of Area Court 1, Shaare delivered on the 15th June, 2001.

Plaintiff/Applicant praying us to grant her prayer for the extension of time within which to appeal. The applicant agreed that she should have come for the appeal before now. But, that there was

moves to reconcile with the husband but the reconciliation could not materialize

On the 8th day of December, 2011 when the motion came up for hearing, parties are both present.

Applicant – court: I beg the Court to grant me leave for an extension of time. Our marriage had been dissolved at the lower Court about three months ago. I pray the court to grant my application.

I have nothing to say more.

Respondent:

Respondent- court: I want the Court to intervene. I want to resolve with her. I am not happy with the divorce by Khu'l. I have no objection to the grant of the application for extension of time.

The application for leave of the Court for an extention of time is not strange to Islamic Law.

It's known as **AL- Imahal Al Ajal.** By the law of the Sharia Court of Appeal, it must be on good reason and convincing grounds of appeal.

This application came as a result of the expiration of the time of 30 days given by law.

Having listened to both parties, the application was mainly based on the fact that there was move for reconciliation which thereafter could not materialize. Also the fact that the applicant grounds of appeal are reasonable and that the respondent did not raise objection to the application.

We on our part had the view that this application deserves our favorable consideration and its hereby granted.

We extend the time for the 2 weeks from today within which the applicant shall file the notice and grounds of the appeal.

Our registry must make sure that all the court processes are intact and are properly handled for documents given to the registrar by any of the party will not be tolerated by the Court.

The application succeeds.

SGD	**SGD**	**SGD**
S. M. ABDULBAKI	**I. A. HAROON**	**A. A. IDRIS**
HON. KADI	**HON. GRAND KADI**	**HON. KADI**
08/12/2011	**08/12/2011**	**08/12/2011**

(39) IN THE SHARIAH COURT OF APPEAL OF KWARA STATE OF NIGERIA
IN THE SHARIAH COURT OF APPEAL OF LAFIAGI JUDICIAL DIVISION
HOLDEN AT SHAARE ON THURSDAY 8TH DECEMBER, 2011.
YAOMUL-KHAMISES 13ST MUHARAM 1432

BEFORE THEIR LORDSHIPS:

I. A. HAROON	**-**	**GRAND KADI**
A. A. IDRIS	**-**	**HON. KADI**
S. M. ABDULBAKI	**-**	**HON. KADI**

MOTION NO: KWS/SCA/CV/M/LF/12/2011

BETWEEN:

NDACHE ALHAJI NDACHE YANMA - APPLICANT

VS

FATI NDACHE - RESPONDENT

principle:

Extension of time is based on the discretion of judge/court where necessary.

RULLING: WRITTEN AND DELIVERED BY I. A. HAROON

The applicant, Alhaji NADACHE Yama filed a motion on notice against the decision of Area Court 1, Tsharage delivered on the 16th September, 2011.

On the 8th day of December, 2011 when the case / motion came up for hearing, the parties are present before us

The applicant prays the court to forgive him for the lateness to file the appeal. The trial court had dissolved our marriage. I am not happy with the outcome of the Judgment especially the monetary claim.

Court - respondent: why are you late to file the appeal. This was never stated in the affidavit in support.

The delay was caused by the sickness of my father which later led to his death.

Respondent - Court**:** I disagree with the appellant because it was during the case of our divorce proceeding that the father was sick and later died.

Applicant- Court : I prayed the court to grant the application.

Considering all the facts deduced from the parties in the instant application for an extension of the time within which the applicant can appeal to our court after the expiration of the 3rd days from the day the judgment was delivered at the Trial Area Court. It is established that the reason for delay was due to the sickness and death of the father of the applicant which occurred between the time the court was in process of the suit for (**Khilu**) and the time it was granted. Also the grounds of appeal in our view are reasonable.

On the basis of the above, the application is considered to be worthy of our favorable consideration. And it was hereby granted.

Extension of time is given for 2 weeks from today. The applicant shall file her notice and grounds of appeal not later than the two weeks. Date for hearing of the main appeal shall be made known to the parties by the registry.

Application succeeds.

SGD	**SGD**	**SGD**
S. M. ABDULBAKI	**I. A. HAROON**	**A. A. IDRIS**
HON. KADI	**HON. GRAND KADI**	**HON. KADI**
08/12/2011	**08/12/2011**	**08/12/2011**

(40) IN THE SHARIA COURT OF APPEAL OF KWARA STATE OF NIGERIA
IN THE SHARIA COURT OF APPEAL OF OFFA JUDICIAL DIVISION
HOLDEN AT OFFA ON TUESDAY, 20TH DECEMBER, 2011

BEFORE THEIR LORDSHIPS:

I.A. HAROON - HON. GRAND KADI
S.O. MUHAMMAD - HON. KADI
M.O. ABDULKADIR - HON. KADI

APPEAL NO: KWS/SCA/CV/AP/OF/01/2011

BETWEEN:

ZEINABU IYA-AZIZA - APPELLANT

AND

ABDUL SAHEED LATEEF - RESPONDENT

principles:

1. The jurisdiction of a judge may be limited restricted to issues such as personal status or specified issues of the personal law such as marriage, divorce only. It can similarly be limited to claims of monetary value of specific sum.
2. It is not for a believer, man or woman, when Allah and his messenger have decreed a matter that they should have any option their decision. And whoever disobey Allah and His messenger, he has indeed strayed in to a plain error.

STATUES/BOOKS REFERRED TO:

1. Section 11 of SCA law 1960
2. Section 2 (1) of Area Court Edicts, 1967
3. Section 4 (2) Area Court Edict, 1967
4. Section 13 (9) SCA law.

5. Nisam Al- Qadai Fi Sharia Al-Islamiyyah by Dr. Abdul-Kareem Zaydany Suratu – Ahzab – 36

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

Zeinab Iya-Aziza the appellant was sued by the respondent AbdulSaheed Lateef at the Ibolo Area Court Grade I, No. 2, Offa in **Suit No. 56/2011** and **Case No. 56/2011** to claim the custody of Aziza Lateef the only issue of their dissolved marriage. The trial court after listening to the parties reviewed the case and decided the matter by awarding the custody of the child in question to the respondent. The judgment, even though the two parties involved in the matter are Muslims, was determined by the Native Law and Custom of Ibolo Land which, according to the trial judge, grants the custody of a child to the father. The appellant; Zeinab Iya-Aziza was aggrieved by this judgment and therefore appealed to our court to seek for a redress. On 28th September 2011 the two parties appeared before us, they were self represented. The appellant in her statement told the court that her grievance was to claim the custody of Aziza Lateef; that their marriage was terminated on 31st January 2010 by the Area Court No. I, Osunte, Offa. She told us that the custody of the child in question was later granted to the respondent by the Area Court No. 2, Offa. She stated that the child in question was living with her before the custody was granted to the respondent. That the trial Area Court No. I, Osunte ordered the respondent to be paying her a sum of **₦3,000** monthly maintenance allowance and that for a period of a year and a half the respondent did not pay. She also asked for the claim of **₦25,000** being charges for the school fees.

The appellant told us that she is a Muslim and their marriage which was later dissolved was contracted under Islamic procedure of *nikkah* in the presence of both parents. She prayed us to grant her the custody and stressed that the respondent cannot take adequate care of

the child. That her mother will be responsible for the welfare and care of the child in question promising that she will also be providing necessary assistance.

On the part of the respondent, he said that the appellant was his former wife, that the child in question was the only issue of the marriage. That Aziza was born on 16th October, 2006. He prayed us not to grant the prayer of the appellant that she had attempted to abort the pregnancy of the child in question and therefore could not entrust her with the child. He told us that the appellant and her mother used to bar him from seeing the child while she was with them. He affirmed that the trial Area Court, Osunte ordered him to be paying the appellant **₦3,000** and that he paid it for three months only. He prayed us to discountenance with the statements of the appellant and to grant him the custody of the child in question.

The appellant in her response to the respondent's statements told us that she was the one paying the school fees. She thereafter tendered a receipt bearing the sum of **₦3,200 (Receipt No. 1617)** for the 3rd Term dated 3/5/2011 signed by the Director of Teke Nursery and Primary School, Oja Ale, Oloffa Road, Offa.

The respondent in his reaction also tendered another school receipt of **₦4,000 (Receipt No. 2150)** dated 7/9/2011 from Siratal Mustaqima Nursery and Primary School, Offa. The two receipts were accepted and marked as ***Exhibits A&B*** respectively.

Having patiently listened to both parties, it is our well considered view that the matter before us i.e. custody of a child falls within the purview of Islamic Personal Law as highlighted under ***Section 11 of the Sharia Court of Appeal Law, 1960*** and ***Section 2(1) of the Area Court Edicts, 1967***. For the purpose of elucidation, we quote ***S. 11 (a & b)*** of the same thus:

The Court shall be competent to decide:-

a. *any question of Islamic law regarding a marriage concluded in accordance with that law, including a question relating the dissolution of such a marriage or a question that depends on such a marriage relating to family relationship or the guardianship of an infant.*

b. *where all the parties to the proceedings are Moslems, any question of Islamic law regarding a marriage, including the dissolution of that marriage, or regarding family relationship, a foundling or the guardianship of an infant.*

Section 4(2) of the Area Court Edicts, 1967 as amended also provided thus:

> *All questions of Islamic personal law shall be heard as determined by the Area Court judge or any member learned in Islamic law sitting alone.*

In the light of the above law, it becomes crystal clear that the law that is applicable to the instant appeal is Islamic Personal Law. The Area Court had therefore fallen a victim of ignorance by applying Ibolo Native and Custom Law in this instant appeal. It was a blunder least expected to be committed by an Area Court judge in this particular time of wide awareness in our Area Courts.

In Islamic golden procedural law, jurisdictional limitation determines the applicable law. This limitation could be based on school of thoughts such as *Maliki* School of Law as in the case of ***Section 13(a) of the Sharia Court of Appeal Law*** upon which the jurisdiction of our court is placed. The limitation could be a territorial, personal, monetary value/claims or marital matters. See the work of Dr. AbdulKarim Zaydani titled ***"Nizam al-Qada'I fi ash-Shari'ah al-Islamiyyah, page 47, par. 7*** which reads thus:

The jurisdiction of a judge may فقد تقيد ولاية القاضي.....

بمسائل الأحوال الشخصية فقط أو بنوع من مسائل الأحوال الشخصية كدعاوى النكاح والطلاق فقط. كما يقيد بنوع من الدعاوى التي لاتزيد قيمتها عن مبلغ معين مثل ألف دينار وهكذا.

be limited/restricted to issues such as personal status or specified issues of the personal law such as marriage, divorce only. It can similarly be limited to claims of monetary value of specific sum such as 1,000 dinar.

We want to stress here that a Muslim, male or female, who professes Islam as a religion shall have no option whatsoever than to bow to Islamic Law.

"وَمَا كَانَ لِمُؤمِنٍ وَلاَ مُؤمِنَةٍ إِذَا قضَى الله وَرَسُولُه أمْراً أن يَكونَ لَهُم ٱلْخِيَرَةُ مِنْ أمْرِهِمْ وَمَن يَعْصِ الله وَرَسُولَهُ فَقَدْ ضَلَّ ضَلاَلاً مُبِينَا" . (سورة الأحزاب آية **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 has indeed strayed into a plain error (surat al-Ahzab: 36).

It is our strong view therefore that the only applicable law to the instant appeal which centers on ***al-hadanat*** and ***an- nafaqat***; custody and maintenance of a child is Sharia Law and we so hold.

The trial judge of Area Court No. 2, Ibolo had fallen into a serious error by applying an alien law on an Islamic issue. Its decision is hereby quashed and declared null and void for wont of jurisdiction.

We order that the suit be retried at the Upper Area Court, Offa by a judge learned in Sharia under the principle of ***al-hadanat*** and ***an-nafaqat*** (custody and maintenance) by accelerated hearing.

Appeal succeeds.

SGD	**SGD**	**SGD**
M.O. ABDULKADIR	**I.A. HAROON**	**S.O. MUHAMMAD**
HON. KADI	**HON. GRAND KADI**	**HON. KADI**
20/12/2011	**20/12/2011**	**20/12/2011**

(41) IN THE SHARIAH COURT OF APPEAL OF KWARA STATE OF NIGERIA
IN THE SHARIAH COURT OF APPEAL OF OFFA JUDICIAL DIVISION
HOLDEN AT OFFA ON TUESDAY 20TH DECEMBER, 2011.
YAOMUL-KHAMISES 13ST MUHARAM 1432

BEFORE THEIR LORDSHIPS:

I. A. HAROON - GRAND KADI

S. O. MUHAMMAD - HON. KADI

M. O. ABDULKADIR - HON. KADI

MOTION NO: KWS/SCA/CV/M/OF/03/2011

BETWEEN:

ADEBAYO NAJEEM - APPLICANT

VS

AUMAT ADEBAYO - RESPONDENT

principle:

The complainant is he whose silence put an end to litigation.

STATUES/BOOKS REFERRED TO:

- Fawakihu Dawani Vol. 2. P 220

RULING: WRITTEN AND DELIVERED BY I. A. HAROON

The applicant, Adebayo Najeem filed a Motion on Notice against the decision of Ibolo Area Grade 1 No 2 Offa delivered on 15h July, 2011.

On the 20th December, 2011, when the motion came up for hearing parties are present.

Sharafadeen Ibrahim Esq., appeared for holding the brief of Debo Adeyemo Esq. who in turns holds brief of R. O. Garba Esq., appeared for the applicant.

And told the court that: It is my firm and definite instruction that the Motion be withdrawn. This instruction was by R. O. Garba Esq., who instructed Debo Adeyemo Esq., whose brief I hold.

Since the motion has been withdrawn by Verbal application of Sharafadeen Ibrahim who is holding the brief of Debo Adeyemo who holds brief for R. O. GARBA, The matter is declared withdrawn in line with the principle of Law which says:

"The plaintiff's is he whose silence puts an end to his case".	**المدعي هو الذي لو سكت لترك على سكوته.**

“The complainant is he whose silence put an end to a Litigation.

The matter is stuck out.

SGD	**SGD**	**SGD**
M. O. ABDULKADIR	**I. A. HAROON**	**S. O. MUHAMMAD**
HON. KADI	**HON. GRAND KADI**	**HON. KADI**
20/12/2011	**20/12/2011**	**20/12/2011**

Distribution

Of

Estates

No. 28, Daudu Banni Compound,
Alore,
Ilorin.

23rd September, 2010

Hon. Grand Kadi,
Sharia Court of Appeal,
Ilorin.

Salamu Alaekun,

DISTRIBUTION OF THE ESTATE OF THE LATE ALHAJI UMAR FAROUK BANNI.

With humble and respect we write to seek the assistance of your lordship in the distribution of the Estate of the Late Alhaji Umar Farouk Banni in accordance with the provisions of the Islamic Law.

We will be very grateful to your early response.

Yours faithfully,

(SGD)
Alhaji Adelodun Orilonise
07064986616 & 08135568655
For: The Family.

LIST OF HEIRS:

GROUP A

1. Alhaja Sherifat Umar Banni (WIFE 1)
2. Umar AbdulLateef SON
3. Umar Lawal SON
4. Umar Muritala SON
5. Umar Abdul - Waheed SON
6. Umar Nimota:- embraced Christianity before death of the deceased
7. Umar Falilat DAUGHTER
8. Umar Balikis DAUGHTER
9. Umar Maridiyat DAUGHTER

GROUP B

1. Alhaja Hajarat Umar Banni (WIFE 2)
2. Umar Abdulganiyu SONS
3. Umar Abdulrahman
4. Umar Jamiu
5. Umar Ramota DAUGHTERS
6. Umar Taibat
7. Umar Muinat
8. Umar Afusat

GROUP C

1. Alhaja Khadijat Umar Banni (DIVORCED WIFE)
2. Umar Lukman SONS
3. Umar Abdulfatai
4. Umar Muibat DAUGHTERS
5. Umar Rasheedat

GROUP `D'

1. Alhaja Idowu Umar Banni (WIFE 3)
2. Umar Abdullahi SONS
3. Umar Ibrahim
4. Umar Muslimat

DAUGHTERS

5. Umar Latifat
6. Umar Salimat
7. Umar Alimat
8. Umar Zainab

LIST OF PROPERTIES

OLAIYA-STREET AGBO-OBA, ILORIN

1. 12 FLAT OF 3 BEDROOMS
2. 6 FLAT OF 3 BEDROOMS
3. 2 FLAT OF 3 BEDROOMS
4. 3 FLAT OF 2 BEDROOMS
5. 1 FLAT OF 2 BEDROOMS
6. 1LARGE STORE

AGBO-OBA ESTATE BEHIND C.A.C. CHURCH, ILORIN

1. 6 FLAT OF 3 BEDROOMS
2. 15 FLAT OF 3 BEDROMMS
3. 4 FLAT OF 2 BEDROOMS
4. 17 ROOMS & PARLOR
5. 1 BAKERY
6. 8 ROOMS
7. 6 ROOMS
8. 5 BEDROOMS FLAT

ALALUBOSA AREA, MARABA, ILORIN

1. 10 FLAT OF 2 BEDROOMS

2. 24 ROOMS
3. 1 LARGE STORE
4. 1 BAKERY

BANNI AREA – ALORE, ILORIN

1. 1 FLAT OF 3 BEDROOMS
2. 1 FLAT OF 2 BEDROOMS

LAND PROPERTIES

1. 40 Plots of Land at Gbako Village, Oko-Olowo, Ilorin
2. 14 Plots of Land at Technical Junction, Ogidi, Ilorin
3. 2 Plots at Isale Banni, Alore, Ilorin
4. ½Plot of Land at Alalubosa Maraba, Ilorin
5. 6 Rooms at foundation level at Oko-Olowo, Ilorin

SHOPS

1. 1 Shop at Oja Tun-tun, Ilorin
2. 2 Shops Opposite Maraba Garage, Ilorin
3. 1 Store Inside Maraba Garage, Ilorin
4. 27 Shops at Oko-Olowo at Foundation Level
5. 1 Small Store at Oja Tun-tujn Ilorin

RefNo:KWS/SCA/ISL.156/4

4th October, 2010.

Alhaji Adelodun Orilonise,
No. 28, Daudu Banni Compound,
Alore,
Ilorin.

Assalmu Alaekum,

RE: DISTRIBUTION OF THE ESTATE OF THE LATE ALHAJI UMAR FAROOK
NOTICE OF MEETING

I am directed to inform you to arrange for the affected family members/heirs of the Late Alhaji Umar Farook Banni to attend the preliminary meeting on the distribution of the estate of the deceased.

The meeting will God-willing take place as stated below:

Date: Monday 11/10/2010
Venue: Sharia Court of Appeal, Ilorin.
Time: 11.00 a.m. prompt.

Please be punctual.

Yours faithfully,

SGD
Yusuf M. Gbalasa
For: Chief Registrar.

MINUTES OF THE PRELIMINARY MEETING ON THE DISTRIBUTION OF THE ESTATE OF THE LATE ALHAJI UMAR FAROOK BANNI HELD AT THE SHARIA COURT OF APPEAL, ILORIN ON MONDAY 11TH OCTOBER, 2010.

01. ATTENDANCE:

1.	Hon. Kadi S.O. Muhammad	Chairman
2.	Hon. Kadi A.A. Idris	Officiating Minister
3.	Hon. Kadi S.M. AbdulBaki	Officiating Minister
4.	Alhaji Adelodun Orilonise	Brother
5.	Alhaji Oba Banni	Brother
6.	Abdulateef Umar	Son
7.	Lookman Umar	Son
8.	Muritala Umar	Son
9.	Abdullahi Umar	Son
10.	Abdul-Fatai Umar	Son
11.	AbdulWaheed Umar	Son
12.	Jamiu Umar	Son
13.	Ramat Umar	Daughter
14.	Taibat Umar	Daughter
15.	Muibat Umar	Daughter
16.	Muslimat Umar	Daughter
17.	Muinat Umar	Daughter
18.	Falilat Umar	Daughter
19.	Hafsat Umar	Daughter
20.	Salimat Umar	Daughter
21.	Halimat Umar	Daughter

22.	Zainab Umar	Daughter
23.	Balikis Umar	Daughter
24.	Moridiyat Umar	Daughter
25.	Lawal Umar	Son
26.	AbdulRahman Umar	Son
27.	AbdulGaniyu Umar	Son
28.	Sulaiman Toiru	Uncle
29.	Lateefat Umar	Daughter
30.	Raheedat Umar	Daughter
31.	Alhaji AbdulRaheem O. Banni	Brother
32.	Alhaji M.J. Dasuki	Panel member
33.	Yusuf M. Gbalasa	Secretary.

2 01. **OPENING PRAYER**:

Led by: Hon. Kadi A.A. Idris at 11. 05 am.

3.01**. OPENING REMARKS**:

The chairman of the Panel, Hon. Kadi S.O.Muhammad welcomed all the family members of the deceased to the preliminary meeting on the distribution of the estate and prayed for God's guidance at all times.

4. 01. **MATTERS ARISING**:

(a) **REQUEST LETTER:** The letter of request written and signed by Alhaji Adelodun Orilonise on behalf of the family of the deceased was read for confirmation. However, list of the legal heirs and properties were also confirmed accordingly.

(b) **STATE OF RELIGION:** Nimotallahi Umar was confirmed to have turned to Christianity and attending Church services long before the death of the deceased.

(c) **VALUATION REPORT:** The panel directed the family to constitute a committee to include representatives of each group and consult a reliable valuer for a comprehensive valuation report on the properties.

5. 01. **CLOSING REMARKS:** The panel advised the family on the need to see themselves as one.

6. 01. **ADJOURNMENT:** The meeting adjourned till when the family would be able to submit valuation report.

7. 01. **CLOSING PRAYER:** The meeting closed with prayer offered by Hon. Kadi S.M. AbdulBaki at 12.00 noon.

SGD	**SGD**
(HON. KADI S.O. MUHAMMAD)	**(YUSUF M. GBALASA)**
CHAIRMAN	**SECRETARY**
11/10/2010	**11/10/2010.**

REF.NO.KWS/SCA/ISL.156/9

29th November, 2010.

Alhaji Adelodun Orilonise,
No. 28, Daudu Banni Compound,
Alore,
Ilorin.

Assalmu Alaekum,

RE: DISTRIBUTION OF THE ESTATE OF THE LATE ALHAJI UMAR FAROOK BANNI

NOTICE OF MEETING

I am directed to inform you to arrange for the affected family members/ heirs of the Late Alhaji Umar Farook Banni to attend the 2nd meeting on the distribution of the estate of the deceased.

The meeting will God-willing take place as stated below:

Date: Thursday 16/12/2010

Venue: Sharia Court of Appeal, Ilorin.

Time: 11.00 a.m. prompt.

Please be punctual.

Yours faithfully,

SGD
Yusuf M. Gbalasa
For: Chief Registrar.

MINUTES OF THE 2ND MEETING ON THE DISTRIBUTION OF THE ESTATE OF THE LATE ALHAJI UMAR FAROOK BANNI HELD AT THE SHARIA COURT OF APPEAL, ILORIN ON TUESDAY 16TH DECEMBER, 2010.

01. ATTENDANCE:

1.	Hon. Kadi S.O. Muhammad	Chairman
2.	Hon. Kadi S.M. AbdulBaki	Officiating Minister
3.	Hon. Kadi M.O. AbdulKadir	Officiating Minister
4.	Alhaji A.R.Ibrahim	Panel Member
5.	Alhaji Adelodun Orilonise	Brother
6.	Alhaji Raheem Oloja	Brother
7.	Mallam Saliu	Brother
8.	Alhaja Sherifat Umar	Wife
9.	Alhaja Ajarat Umar	Wife
10.	Alhaja Idowu Umar	Wife
11	Ganiyu Umar	Son
12.	Abdullahi Umar	Son
13.	AbdulLateef Umar	Son
14.	Taibat Umar	Daughter
15.	Muibat Umar	Daughter
16.	Lawal Umar	Son
17.	AbdulRahman Umar	Son
18.	Wheed Um	Son
19.	Jamiu Umar	Son
20.	Fatai Umar	Son
21.	Rasheedat Umar	Daughter

22.	Falilat Umar	Daughter
23.	Halimat Umar	Daughter
24.	Salamat Umar	Daughter
25.	Ibrahim Umar	Son
26.	Muslimat Umar	Daughter
27.	Maridiyyah Umar	Daughter
28.	Bilikis Umar	Daughter
29.	Ramata Umar	Daughter
30.	Lateefat Umar	Daughter
31.	Hafsat Umar	Daughter
32.	Zainab Umar	Daughter
33.	Alhaji M.J. Dasuk	Panel member
34.	Yusuf M. Gbalasa	Secretary.

1. 01. <u>OPENING PRAYER:</u>

The meeting opened with prayer led by Hon.S.M. AbdulBaki at 11.50 a.m

2. 01. <u>OPENING REMARKS:</u>

The Chairman of the panel, Hon. Kadi S.O. Muhammad welcomed all the family members of the deceased to the 2nd meeting on the distribution of the estate and prayed for God's guidance at all times. Meanwhile, he tendered the apology of the 2 Officiating ministers for there inability to attend the meeting adding that they had gone out for another pressing official assignment.

01. **<u>READING OF THE LAST MINUTES:</u>**

The minutes of the preliminary meeting was read and unanimously adopted on motion moved by Abdullateef

Umar and seconded by Alhaji Adelodun Orilonise respectively.

3. **MATTERS ARISING:**

(a) VALUATION REPORT: Abdullateef Umar observed that properties N, O and P, under building No. 12 of property 1 were all the same therefore, it must reflect the same value. Also, property 6 at no. 14, Sokoto Road, Ilorin which is a Warehouse was not also properly valued. Therefore, the panel directed the family to go and re-value those properties mentioned to reflect the correct value.

6. 01. **CLOSING REMARKS:**

The panel advised the family to submit the corrected valuation report on time to enable the panel complete the exercise. Meanwhile, the family observed that the personal effects of the deceased were distributed at the family house before coming to the Sharia Court of Appeal, Ilorin.

7.01. **CLOSING PRAYER:**

The meeting closed with prayer offered by Hon. Kadi M.O AbdulKadir at 1.20 p.m.

SGD	**SGD**
(HON.KADIS.O.MUHAMMAD)	**(YUSUF M. GBALASA)**
CHAIRMAN	**SECRETARY**
11/10/2010	**11/10/2010.**

REF No: KWS/SCA/ISL.156/13
12th January, 2010.

Alhaji Adelodun Orilonise,
No. 28, Daudu Banni Compound,
Alore,
Ilorin.

Assalmu Alaekum,

RE: DISTRIBUTION OF THE ESTATE OF THE LATE ALHAJI UMAR FAROOK BANNI

NOTICE OF MEETING

I am directed to inform you to arrange for the affected family members/ heirs of the Late Alhaji Umar Farook Banni to attend the 3rd meeting on the distribution of the estate of the deceased.

The meeting will God-willing take place as stated below:

Date: Monday 31/01/2011
Venue: Sharia Court of Appeal, Ilorin.
Time: 11.00 a.m.

Please be punctual.

Yours faithfully,
SGD
Yusuf M. Gbalasa
For: Chief Registrar

MINUTES OF THE 3rd MEETING ON THE DISTRIBUTION OF THE ESTATE OFTHE LATE ALHAJI UMAR FAROOK BANNI HELD AT THE SHARIA COURT OF APPEAL, ILORIN ON TUESDAY 22ND FEBRUARY, 2010.

01. ATTENDANCE:

1.	Hon. Kadi S.O. Muhammad	Chairman
2.	Hon. Kadi A.A. Idris	Officiating Minister
3.	Hon. Kadi S.M. AbdulBaki	Officiating Minister
4.	Hon. Kadi A.A. Owolabi	Officiating Minister
5.	Alhaji A.R. Ibrahim	Panel Member
6.	Alhaji Adelodun Orilonise	Half Brother
7.	Alhaji Oba Banni	Half Brother
8.	Alhaji Saliu Ojolowo	Family Friend
9.	Alhaji Hanafi Banni	Half Brother
10.	Alhaji Abdullahi Banni	Half Brother
11.	Alhaji Baba Olowomojuore	Family Friend
12.	Alhaji Meji Banni	Half Brother
13.	Alhaji AbdulRaheem Banni	Half Brother
14.	Alhaji AbdulRaheem Ajadi	Cousin
15.	Alhaji Saliu Banni	Half Brother
16.	Alhaja Sherifat Umar	Wife
17.	Alhaja Hajarat Umar	Wife
18.	Alhaja Idowu Umar	Wife
19.	Umar AbdulLateef	Son
20.	Umar O. AbdulGaniy	Son
21.	Umar Abullahi	Son
22.	Umar Jamiu	Son
23.	Umar Lukman	Son
24.	Umar AbdulWaheed	Son
25.	Umar AbdulFatai	Son
26.	Umar Lawal	Son
27.	Umar AbdulRahman	Son

28.	Umar Ibrahim	Son
29.	Umar Muritadoh	Son
30.	Umar Falilat	Daughter
31.	Umar Toheebat	Daughter
32.	Umar Muheebat	Daughter
33.	Umar Halimat	Daughter
34.	Umar Lateefat	Daughter
35.	Umar Muslima	Daughter
36.	Umar Muinat	Daughter
37.	Umar Rasheedat	Daughter
38.	Umar Balikis	Daughter
39.	Umar Hafsat	Daughter
40.	Umar Salimat	Daughter
41.	Umar Zainab	Daughter
42.	Umar Moridiyyah	Daughter
43.	Umar Ramata	Daughter
44.	Alhaji M.J. Dasuki	Panel member
45 .	Yusuf M. Gbalasa	Secretary.

1. 02.

2. 01. <u>OPENING PRAYER</u>:

The meeting opened with prayer led by Hon. Kadi A.A. Idris at 10. 25 am.

3.01. <u>OPENING REMARKS</u>:

The chairman of the Panel, Hon. Kadi S.O.Muhammad welcomed all the family members of the deceased to the 3RD meeting on the distribution of the estate and prayed for God's guidance at all times. Later on, he tendered the apology of Hon. Kadi M.O. AbdulKadir for his inability to attend the meeting

4. **READING OF THE LAST MEETING.**

The minutes of the last meeting was read and unanimously adopted on motion moved by AbdulFatai Umar and seconded by Muslimat Umar respectively.

4. 01. MATTERS ARISING:

(b) STATE OF RELIGION: Was confirmed by all the family members of the deceased to be practicing Christianity long before the death of her father. They added that after the death of the deceased, Nimotallahi was invited to a meeting at the family house, but she failed to respond to all the pleading to return into the fold of Islam. Therefore, the Panel directed that in as much as Nimotallahi Umar practiced Christianity and attended Church Services till the death of her father, she cannot inherit from the estate of the deceased.

(b) LIST OF HEIRS: The list of the legal heirs of the deceased was confirmed according to their groups. All the heirs were in attendance including to family members of the late Alhaji Umar Farook Banni.

8. 01. CLOSING PRAYER:

The meeting closed with prayer offered by Hon. Kadi S.M. AbdulBaki at 12.00 noon.

SGD	**SGD**
(HON. KADI S.O. MUHAMMAD)	**(YUSUF M. GBALASA)**
CHAIRMAN	**SECRETARY**
11/10/2010	**11/10/2010.**

DISTRIBUTION OF THE ESTATE OF
THE LATE ALHAJI UMAR FAROOK BANNI.
REAL ESTATE DISTRIBUTION
14/02/2011
WORKING PAPER `A'

LIST OF HEIRS:

GROUP `A'

1. Alhaja Sherifat Umar Banni (Wife 1)
2. Umar AbdulLateef (Son)
3. Umar Lawal (Son)
4. Umar Muritala (Son)
5. Umar AbdulWaheed (Son)
6. Umar Nimotallahi (embraced Christianity before death of the deceased) (Daughter)
7. Umar Falilat (Daughter)
8. Umar Bilikis (Daughter)
9. Umar Moridiyat (Daughter)

GROUP `B'

9. Alhaja Hajarat Umar Banni (Wife 2)
10. Umar AbdulGaniyu (Son)
11. Umar AbdulRahman (Son)
12. Umar Jamiu (Son)
13. Umar Ramatallahi (Daughter)
14. Umar Taibat (Daughter)

15. Umar Muinat (Daughter)
16. Umar Hafsat (Daughter)

GROUP `C'

1. Alhaja Khadijat Umar Banni (Divorced)
2. Umar Lukman (Son)
3. Umar AbdulFatai (Son)
4. Umar Muibat (Daughter)
5. Umar Rasheedat (Daughter)

GROUP `D'

1. Alhaja Idowu Umar Banni (Wife 3)
2. Umar Abdullahi (Son)
3. Umar Ibrahim (Son)
4. Umar Muslimat (Daughter)
5. Umar Lateefat (Daughter)
6. Umar Salimat (Daughter)
7. Umar Halimat (Daughter)
8. Umar Zainab (Daughter)

WORKING PAPER `B'

LIST OF ITEMS OF THE ESTATE AS LISTED IN THE VALUATION REPORT.

PROPERTY 1: Is known and addressed as Alhaji Umar Farook Banni Estate located at Agbo-Oba Area, behind Christ Apostolic Church (C.A.C) Oke – Alafia, Ilorin. It consists the following:-

Building 1: Consist 2 no. 3 bedroom flat and 4 no. 4 bedroom Flat as follows:-

Flat 1	=	₦3, 374,818.00
Flat 2	=	₦3, 374,818.00
Flat 3	=	₦4, 621,050.00
Flat 4	=	₦4, 621,050.00
Flat 5	=	₦4, 621.050.00
Flat 6	=	₦4, 621.050.00
TOTAL: =		**₦25,233,836.00**

Building 2: Consist 6 no. rooms and 5 bedroom Flat as follows:-

5 Bedroom 1st Floor valued at ₦4, 037,819.00
Room 1 valued at ₦ 672,969.83
Room 2 valued at ₦ 672,969.83
Room 3 valued at ₦ 672,969.83
Room 4 valued at ₦ 672,969.83
Room 5 valued at ₦ 672,969.83
Room 6 valued at ₦ 672,969.83
TOTAL:- ₦8, 075,638.00

(C) Building 3: Consist 8 no. rooms (Boys Quarter) as follows**:-**

Room 1 valued at ₦ 235,424.75
Room 2 valued at ₦ 235,424.75
Room 3 valued at ₦ 235,424.75
Room 4 valued at ₦ 235,424.75

Room [5] valued at ₦ 235,424.75
Room [6] valued at ₦ 235,424.75
Room[7] valued at ₦ 235,424.75
Room[8] valued at ₦ 235,424.75

TOTAL:= ₦1,883,398.00

(D) Building 4: Consist a Bakery valued ₦5, 607,118.00

(E) Building 5: Consist 4 no. room/parlor as follows:-

Room/parlor[1] = ₦441, 729.50
Room/parlor[2] = ₦441, 729.50
Room/parlor[3] = ₦441, 729.50
Room/parlor[4] = ₦441, 729.50

TOTAL: ₦1, 766,918.00

(F) Building 5[B]: Consist 2 no. Room/Parlour (Boys Quarter) as follows:-

Room/parlor[1] = ₦802,259.00
Room/parlor[2] = ₦802,259.00

TOTAL:= ₦1,604,519.00

(G) Building 6: Consist 4 no. Room/parlour as follows:-

Room/parlor[1] = ₦441, 729.50
Room/parlor[2] = ₦441, 729.50
Room/parlor[3] = ₦441, 729.50
Room/parlor[4] = ₦441, 729.50

TOTAL:= ₦1,766,918.00

(H) BUILDING 6[B]: Consist 7 no. Room/Parlour as follows:-

Room/Parlor [1] = ₦931,731.14
Room/Parlor [2] = ₦931,731.14
Room/Parlor [3] = ₦931,731.14

Room/Parlor [4] = ₦931,731.14

Room/Parlor [5] = ₦931,731.14

Room/Parlor [6] = ₦931,731.14

Room/Parlor [7] = ₦931,731.14

TOTAL: = ₦6,522,118.00

(I) Building 7: Consist 2 no. 2 bedroom flat as follows:-

Flat [1] = ₦1,960,619.00

Flat [2] = ₦1,960,619.00

TOTAL: = ₦3,921,238.00

(J) Building 8: Consist_ 2 no. 2 bedroom flat as follows:-

Flat [3] = ₦1,960,619.00

Flat [4] = ₦1,960,619.00

TOTAL: = ₦3,921,238.00

(K) Building 9: Consist 2 no. 3 bedroom flat as follows:-

Flat [1] = ₦2,457,O59.00

Flat [2] = ₦2,457,059.00

TOTAL:= ₦4,914,118.00

(L) Building10: Consist 2 no. 3 bedroom flat as follows:-

Flat [3] = ₦2,457,O59.00

Flat [4] = ₦2,457,059.00

TOTAL:= ₦4,914,118.00

(M) Building 11: Consist 2 no. 3 bedroom flat as follows:-

Flat [5] = ₦2,457,O59.00

Flat [6] = ₦2,457,059.00

TOTAL: = ₦4,914,118.00

(N) Building 12: Consist 3 no. 3 bedroom flat as follows:-

Flat [7] = ~~₦~~2,824,439.33

Flat [8] = ~~₦~~2,824,439.33

Flat [9] = ~~₦~~2,824,439.33

TOTAL: = ~~₦~~8,473,317.99

(O) Building 13: Consist 3 no. 3 bedroom flat as follows:-

Flat [10] = ~~₦~~2,824,439.33

Flat [11] = ~~₦~~2,824,439.33

Flat [12] = ~~₦~~2,824,439.33

TOTAL: = ~~₦~~8,473,317.99

(P) Building 14: Consist 3 no. 3 bedroom flat as follows:-

Flat [13] = ~~₦~~2,824,439.33

Flat [14] = ~~₦~~2,824,439.33

Flat [125] = ~~₦~~2,824,439.33

TOTAL: = ~~₦~~8,473,317.99

Property 2: Is known and addressed as Alhaji Umar Farook Banni House located along Olaiya Street Agbo-Oba, Ilorin.

Building 1: Consists the following:-

(i) Flat [1], 3 no. bedroom = ~~₦~~ 2,143,383.33

(ii) Flat [2], 3 no. bedroom = ~~₦~~ 2,143,383.33

(iii) Flat [3], 3 no. bedroom = ~~₦~~ 2,143,383.33

(iv) Flat [4], 3 no. bedroom = ~~₦~~ 2,143,383.33

(v) Flat [5], 3 no. bedroom = ~~₦~~ 2,143,383.33

(vi) Flat [6], 3 no. bedroom = ~~₦~~ 2,143,383.33

TOTAL:= ~~₦~~12,860,299.98

Building 2: Consists the following:-

(i) Flat [7], 3 no. bedroom = ₦ 2,143,383.33
(ii) Flat [8], 3 no. bedroom = ₦ 2,143,383.33
(iii) Flat [9], 3 no. bedroom = ₦ 2,143,383.33
(iv) Flat[10], 3 no. bedroom = ₦ 2,143,383.33
(v) Flat [11], 3 no. bedroom = ₦ 2,143,383.33
(vi) Flat [12], 3 no. bedroom = ₦ 2,143,383.33

TOTAL:= ₦12,860,299.98

Property 3: is known and addressed as Alhaji Umar Farook Banni House located along Olaiya Street Agbo-Oba, Ilorin.

Building 1: Consists as follows:-

(i) Flat [1], 3 no. bedroom = ₦ 2,898,833.33
(ii) Flat [2], 3 no. bedroom = ₦ 2,898,833.33
(iii) Flat [3], 3 no. bedroom = ₦ 2,898,833.33
(iv) Flat [4], 3 no. bedroom = ₦ 2,898,833.33
(v) Flat [5], 3 no. bedroom = ₦ 2,898,833.33
(vi) Flat [6], 3 no. bedroom = ₦ 2,898,833.33

TOTAL:= ₦17,392,999.98

Building 2: Consists the following:-

(i) Flat [7], 3 no. bedroom = ₦ 1,558,571.43
(ii) Flat [8], 3 no. bedroom = ₦ 1,758,571.43
(iii) Flat [9], 3 no. bedroom = ₦ 1,758,571.43
(iv) Flat [10], 3 no. bedroom = ₦ 1,558,571.43
(v) Flat [11], 3 no. bedroom = ₦ 1,558,571.43
(vi) Flat [12], 3 no. bedroom = ₦ 2,717,142.85

TOTAL:= ₦ 10,910,000.00

(Attached Garage) not for distribution

Property 4:- Is known and addressed as Ile -Alade, Isale – Banni area, Ilorin. It consists a block of twin flat of 3 bedroom and 2 bedroom bungalow built on one floor as follows:

Wing A, Flat$_1$ 3 no. bedroom = 2,004,400.00
Wing B, Flat $_2$ 3 no. bedroom = 1,900.000.00
TOTAL:- 3,904,400.00

Property 5:- Is known and addressed as Alhaji Umar Farook Banni house located along Alalubosa area off Fufu Street, Sabo-Oke, Ilorin. It consists a block of 16 no. tenement rooms built on two floors, a block attached of boys Quarter built on two floors and a block of bakery building built on one floor as follows:-

(i) Bakery = ₦993, 220.00
(ii) Production room = ₦496,610.00
(iii) Mixing room = ₦496,610.00
TOTAL:= ₦ 1,986,440.00

(a) Tenant Building

Ground Floor (RHS)

Room$_1$ = 264,975.00
Room$_2$ = 264,975.00
Room$_3$ = 264,975.00
Room$_4$ = 264,975.00
TOTAL:= 1,059,900.00

Ground Floor:- (LHS)

Room$_5$ = 264,975.00

$Room_6$	=	264,975.00
$Room_7$	=	264,975.00
$Room_8$	=	264,975.00
	TOTAL:=	**1,059,900.00**

First Floor :- (RHS)

$Room_9$	=	264,975.00
$Room_{10}$	=	264,975.00
$Room_{11}$	=	264,975.00
$Room_{12}$	=	264,975.00
	TOTAL:=	**1,059,900.00**

First Floor:- (LHS)

$Room_{14}$	=	264,975.00
$Room_{15}$	=	264,975.00
$Room_{16}$	=	264,975.00
	TOTAL:=	**1,059,900.00**

c) Boys Quarters Block:-

Ground Floor :-

$Room_{17}$	=	149,945.00
$Room_{18}$	=	149,945.00
$Room_{19}$	=	149,945.00
$Room_{20}$	=	149,945.00
	TOTAL:=	**599,780.00**

First Floor:-

$Room_{21}$	=	149,945.00
$Room_{22}$	=	149,945.00

$Room_{23}$	=	149,945.00
$Room_{24}$	=	149,945.00
	TOTAL:=	**599,780.00**

Property 6:- Is known and addressed as Alhaji Umar Farook Banni house No. 14, Iporin Street Off Sokoto Road, Sabo – Oke Area, behind Maraba Garage, Ilorin. It comprises a block of 6 no. 2 bedroom flat, a block of 4 no. 2 bedroom flat all built on 3 floors as follows:-

(a) Building 1:- Consists as follows:-

(i)	**Flat $_1$ 2 no. bedroom**	**=**	**₦1,679,466.67**
(ii)	Flat $_2$ 2 no. bedroom	=	₦1,679,466.67
(iii)	Flat $_3$ 2 no. bedroom	=	₦1,679,466.67
(iv)	Flat $_4$ 2 no. bedroom	=	₦1,679,466.67
(v)	Flat $_5$ 2 no. bedroom	=	₦1,679,466.67
(vi)	Flat $_6$ 2 no. bedroom	=	₦1,679,466.67
	TOTAL:=		**₦10,076,800.02**

(b) Building 2:-

(i)	$Flat_7$ 2 no. bedroom	=	₦ 1,336,746.67
(ii)	$Flat_8$ 2 no. bedroom	=	₦ 1,336,746.67
(iii)	$Flat_9$ 2 no. bedroom	=	₦ 1,336,746.67
(iv)	$Flat_{10}$ 2 no. bedroom	=	₦ 1,336,746.67
(v)	Ware House	=	₦ 1,373,493.34
	TOTAL:=		**₦6,720,480.00**

(c) Large store valued at = **₦500,000.00**

Property 7:- Is known and addressed as Alhaji Umar Farook Banni Shops located along old Jebba Road, opposite Ilorin East Local Government Maraba, Motor Park, beside Almighty God Investment Shopping Centre Maraba, Ilorin. It consists a block of a large shop on one floor.

Shop $_1$	=	₦749, 150.00
Shop $_2$	=	₦749, 150.00
TOTAL:=		**₦1,498.300.00**

Property 8:- Is known and addressed as Alhaji Umar Farook Banni Shops located at No.1018 and No.215 Oja – Tuntun, Baboko area, Ilorin. It comprises

(a)	**Shop 1 No.1018**	=	**₦ 400,545.00**
(b)	**Shop 2 No. 215**	=	**₦ 60,000.00**
		TOTAL:-	**₦460,545.00**

Property 9:- Is known and addressed as Alhaji Umar Farook Banni land situated at KM 160 Ilorin Jebaa Road, (Eiyekorin – Oko – Olowo Road) Opposite Ibrolak Oil, Oko – Olowo area, Ilorin. It constists an unexhausted piece of land of 40 plots fenced with sandcrete hollow block wall fence. An attached 27 no. shop at foundation level with a block of 3 no. room at foundation level and 3 no. room yet to be constructed.

(a) Uncompleted 27 no. Shops (Foundation level)

Valued at ₦43, 555.56 each Total = ₦1,176,000.12

(b) Uncompleted 6 no. rooms (Foundation level)

Ground Floor: 6 no. rooms valued at N46,907.00 each

TOTAL = 281,442.00

(c) 40 Plots of unexhausted land valued as follows:-

Plot[1]	=	₦200,000.00
Plot[2]	=	₦220,000.00
Plot[3]	=	₦230,000.00
Plot[4]	=	₦235,000.00
Plot[5]	=	₦250,000.00
Plot[6]	=	₦250,000.00
Plot[7]	=	₦250,000.00
Plot[8]	=	₦250,000.00
Plot[9]	=	₦252,000.00
Plot[10]	=	₦250,000.00
Plot[11]	=	₦250,000.00
Plot[12]	=	₦252,000.00
Plot[13]	=	₦250,000.00
Plot[14]	=	₦250,000.00
Plot[15]	=	₦250,000.00
Plot[16]	=	₦250,000.00
Plot[17]	=	₦250,000.00
Plot[18]	=	₦245,000.00

Plot[19]	=	₦245,000.00
Plot[20]	=	₦240,000.00
Plot[21]	=	₦245,000.00
Plot[22]	=	₦245,000.00
Plot[23]	=	₦240,000.00
Plot[24]	=	₦240,000.00
Plot[25]	=	₦240,000.00
Plot[26]	=	₦240,000.00
Plot[27]	=	₦245,000.00
Plot[28]	=	₦240,000.00
Plot[29]	=	₦240,000.00
Plot[30]	=	₦240,000.00
Plot[31]	=	₦240,000.00
Plot[32]	=	₦240,000.00
Plot[33]	=	₦240,000.00
Plot[34]	=	₦240,000.00
Plot[35]	=	₦210,000.00
Plot[36]	=	₦220,000.00
Plot[37]	=	₦200,000.00
Plot[38]	=	₦200,000.00
Plot[39]	=	₦200,000.00
Plot[40]	=	₦200,000.00
		TOTAL:-9,472.000.00

Property 10:- Is known and addressed as Alhaji Umar Farook Banni land located along Ogidi/Oko-Olowo road by Government Technical College junction, Ilorin. It consists a land of 14 plots measuring a total area of ₦6, 511.82 meter square.

Plot1	=	N350,000.00
Plot2	=	N350,000.00
Plot3	=	N350,000.00
Plot4	=	N400,000.00
Plot5	=	N300,000.00
Plot6	=	N250,000.00
Plot7	=	N350,000.00
Plot8	=	N350,000.00
Plot9	=	N300,000.00
Plot10	=	N250,000.00
Plot11	=	N350,000.00
Plot12	=	N350,000.00
Plot13	=	N350,000.00
Plot14	=	N400,000.00
	TOTAL:=	**N4,700,000.00**

Property 11:- Is known and addressed as Alhaji Umar Farok Banni land located along Fufu Street, opposite Alalubosa Mosque, Sabo – Oke, area, Ilorin. It comprises foundation solidly built as visual observation on permit. Valued at **₦450,000.00**

Property 12:- Is known and addressed as Alhaji Umar Farok Banni landed property situated at Isale – Banni area via Banni

Community Secondary School, Alore, Ilorin. It comprises a bare land of 2 plots measuring 200FT/50FT.

(a) $Plot_1$ = 50FT/100FT = 150,000.00
(b) $Plot_2$ = 50 FT/100FT = 150,000.00
TOTAL:- ₦300,000.00
GRAND TOTOAL:- ₦201,454,413.07

WORKING PAPER 'C'
FRACTIONAL SHARES OF THE REAL ESTATE DISTRIBUTION

TOTAL ESTATE = ₦201, 454,413.07.

⅛ of ₦201,454,413.07. = ₦25, 181,801.635. for the 3 wives

₦25, 181,801.635 ÷ 3 = ₦8, 393,933.878 for each wife.

Balance = ₦176,272.611.455 for 11 Sons and 14 Daughters

11 Sons = 22 Daughters
14 Daughters = 14
= 36 Working Figure

i.e. each Daughter will have ₦4,896,461.429 worth of the real estate.
while each son will have twice ₦9,792,922.858 worth of the real estate.

SUMMARY

1. **Wife = ₦8,393,933.878 x 3 = ₦25,181,801.635**
2. **Son = ₦9,792,922.858 x 11 = ₦107,722,151.438**

3. **Daughter = ₦4,896,461.429 x 14 = ₦68,550,460.006**

GRAND TOTAL = ₦201,454,413.07

WORKING PAPER 'C'

GROUP SHARES OF REAL ESTATE DISTRIBUTION

GROUP `A'

			ENTITLEMENT ₦ : K
1.	Alhaja Sherifat Umar Banni	(wife 1) -	₦8,393,933.878
2.	Umar AbdulLateef	(Son) -	₦9,792,922.858
3.	Umar Lawal	(Son) -	₦9,792,922.858
4.	Umar Muritala	(Son) -	₦9,792,922.858
5.	Umar AbdulWaheed	(Son) -	₦9,792,922.858
6.	Umar Falilat	(Daughter) -	₦4,896,461.429
7.	Umar Balikis	(Daughter) -	₦4,896,461.429
8.	Umar Moridiyat	(Daughter) -	₦4,896,461.429

TOTAL = N62,255,099.597

9. GROUP `B'

			ENTITLEMENT ₦ : K
1.	Alhaja Hajarat Umar Banni	(Wife) =	₦8,393,933.878
2.	Umar AbdulGaniyu	(Son) =	₦9,792,922.858
3.	Umar AbdulRahman	(Son) =	₦9,792,922.858
4.	Umar Jamiu	(Son) =	₦9,792,922.858
5.	Umar Ramatallahi	(Daughter) =	₦4,896,461.429
6.	Umar Taibat	(Daughter) =	₦4,896,461.429
7.	Umar Muinat	(Daughter) =	₦4,896,461.429
8.	Umar Hafsat	(Daughter) =	₦4,896,461.429

TOTAL = N57, 358,548.168

GROUP `C'

			ENTITLEMENT ₦ : K
1.	Umar Lukman	(Son) -	₦9,792,922.858
2.	Umar AbdulFatai	(Son) -	₦9,792,922.858
3.	Umar Muibat	(Daughter) -	₦4,896,461.429
4.	Umar Rasheedat	(Daughter) -	₦4,896,461.429
	TOTAL	**=**	**₦29, 378,768.574**

GROUP `D'

			ENTITLEMENT ₦ : K
1.	Alhaji Idowu Umar Banni	(Wife)	₦8,393,933.878
2.	Umar Abdullahi	(Son)	₦9,792,922.858
3.	Umar Ibrahim	(Son)	₦9,792,922.858
4.	Umar Muslimat	(Daughter)	₦4,896,461.429
5.	Umar Lateefat	(Daughter)	₦4,896,461.429
6.	Umar Salimat	(Daughter)	₦4,896,461.429
7.	Umar Halimat	(Daughter)	₦4,896,461.429
8.	Umar Zainab	(Daughter)	₦4,896,461.429

Total = N52, 462,086.739

GROUP SUMMARY

1. **GROUP `A' = ₦62,255.009.597**
2. **GROUP `B' = ₦57,358,548.168**
3. **GROUP `C' = ₦29, 378,768.574**
4. **GROUP `D' = ₦52,462,086.739**

GRAND TOTAL = ₦201, 454,413.07

(c) **LIST OF HEIRS:** The list of the legal heirs of the deceased was confirmed according to their groups. All the heirs were in attendance including all the family members of the late Alhaji Umar Farook Banni.

DISTRIBUTION/ALLOTMENT

	GROUP `A' ALHAJA SHERIFAT UMAR & CHILDREN	ENTITLEMENT ₦ : K **62,255.009.597**
S/N	**DETAILS OF PROPERTIES RECEIVED**	**VALUE**
1	Property 1: located at Agbo-oba Area, Ilorin behind Christ Apostolic Church (C.A.C) Oke-Alafia Ilorin. Building 5: Consist 4no. room/parlour valued at	1,766,918.00
	Building 5B: Consist 2no. room/parlour (Boys Quarters) valued at	1,604,519.00
	Building 6: Consist 4no.room/parlour valued at	1,766,918.00
	Building 7: Consist 2no. 2 bedroom flat 1,2 valued at	3,921,238.00
	Building 8: Consist 2no. 2 bedroom flat 3, valued at	3,921,238.00

	Building 9: Consist 2no. 3 bedroom flat 1 & 2 valued at	4,914,118.00
	Building 11: Consist 2no. 3 bedroom flat 5 & 6valued at	4,914,118.00
	Building 13: Consist 3no. 3 bedroom flat 10,11& 12 valued at	8,473,317.00
2.	Property 2: located at Olaiya Street Agbo-Oba Area, Ilorin. Building 1: Consist 6no. 3bedroom flat 1,2,3,4,5&6 valued at	12,860.299.98
3.	Property 4: located at Ile-Alade, Isale Banni area, Ilorin. Consist a block of twin flat of 3 bedroom and 2 bedroom bungalow built on one floor wing A, flat, 3 no bedroom and wing `B' Flat 2. 3no. bedroom valued at	3,904,400.00
4.	Property 5: located along Alalubosa area off Fufu Street, Sabo-Oke, Ilorin. (i). Bakery - 993,220.00 (ii) Production room - 496,610.00 (iii) Mixing room - 496,610.00 Valued at	1,986,440.00
	Ground Floor (LHS) room 5,6,7 & 8 Valued at First Floor (RHS) room 9, 10,11,12 valued at	1,059,900.00 1,059,900.00
	First Floor (RHS) room 13, 14,15 & 16 valued at	1,059,900.00

	Boys Quarters Block: Ground Floor: room 17,18,9, 20 valued at First Floor: room 21, 22, 23,& 24 valued at	 599,780.00 599,780.00
5.	Property 7: located along old Jebba Road, Opposite, Ilorin East Local Government Maraba, Motor Parks, Ilorin. Shop 2 valued at	749,150.00
6.	Property 9: located at Km 160 Ilorin Jebba (Eiyekorin Oko –Olowo Road), Ilorin. Consist (a) Uncompleted 27 no. Shops (Foundation level) level at 43,555.56 each. (b) Uncompleted 6 no. rooms (Foundation level) Ground Floor: 5 no. rooms valued at (c) 24 plots of unexhausted land out of 40 plot valued at	1,176,000.12 234,535.00 5,585,000.00
	TOTAL RECEIVED	62,157,469.01
	CREDIT BALANCE	97,540.58

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	GROUP `B' ALHAJA HAJARAT UMAR & CHILDREN	**ENTITLEMENT** ₦ : K 57,358.548.168

S/N	DETAILS OF PROPERTIES RECEIVED	VALUE
1.	Property 1: located at Agbo-Oba Area, behind Christ Apostolic Church (C.A.C) Oke-Alafia, Ilorin. Building 1: Consist 2 no. 3 bedroom flat and 4 no. 4 bedroom flat 1,2,3,4,5 & 6 valued at Building 2: Consist 6 no. rooms and 5 bedroom flat. Room 1, 2, 3, 4, 5 and 6 valued at Building 3: Consist 8 no. rooms boys Quarters room 1, 2, 3, 4, 5,6,7 & 8 valued at Building 6B: Consist 7 no. rooms/Parlour 1,2,3,4,5,6 and 7 valued at	25,233,836.00 8,075,638.00 1,883,3908.00 6,522,118.00
2.	Property 5: located along Alalubosa area off Fufu Street, Sabo – Oke, Ilorin (a) Tenant Building: Ground Floor: (RHS) room 1,2,3& 4 valued at	1,059,900.00
3.	Property 6: located No.14, Iporin Street off Sokoto road, Sabo- Oke area, behind Maraba Garage, Ilorin Building 1: Consist flat 1 2 no. bedroom flat 2 2 no bedroom flat 3 2 no bedroom	

	flat [4] 2 no bedroom flat [5] 2 no. bedroom flat [6] 2 no. bedroom all valued at	10,076,800.02
4.	Property 7: located along old Jebba road, opposite Ilorin East Local Government, Maraba Motor Park,Ilorin. Shop 1 valued at	749,150.00
5.	Property 9: located at Km 160 Ilorin Jebba road, Eiyekorin Oko – Olowo road Ilorin. (c) 14no. Plots of unexhausted land out of 40 plots. Plots 1, 2, 4, 5, 6, 7, 8,9, 10, 11, 12, 13, 14, 15.	3,409.000.00
6.	Property 11: Virgin land located along Fufu Street, Opposite Alalubosa Mosque, Sabo – Oke area, Ilorin valued at.	450,000.00
	TOTAL RECEIVED	57,459,840.02
	DEBIT BALANCE	101,291,852

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	GROUP `C' LUKMAN, FATAI, MUIBAT & RASHEEDAT UMAR.	**ENTITLEMENT** **₦ : K** **29,378.768.574**

S/N	DETAILS OF PROPERTIES RECEIVED	VALUE
1.	Property 1: located at Agbo-Oba Area, behind Christ Apostolic Church (C.A.C) Oke-Alafia, Ilorin. Building 14: Consist 3 no.3bedrooms flat. 13, 14, 15 valued at	8,473,317.99
2.	Property 2: located along Olaiya Street Agbo-Oba Area, Ilorin. Building 2: Consist flat 7, 8, 9, 10, 11 & 12 valued at	12,860.299.98
3	Property 6: located No.14, Iporin Street off Sokoto road, Sabo- Oke area, behind Maraba Garage, Ilorin (b) Building2: Consist flat 7 2 no. bedroom flat 8 2 no bedroom flat 9 2 no bedroom flat10 2 no bedroom Ware House all valued at (c) Large Store valued at	6,720,480.02 500,000.00
4.	Property 9: located at Km 160 Ilorin Jebba road, Eiyekorin Oko – Olowo road Ilorin. (c) 2 no. Plot of land plot 3 &16 out of 40 plots of unexhausted land valued at	480,000.00
5.	Property 10: Located along Ogidi/Oko – Olowo road by Government Technical	

	College Junction, Ilorin. Plot 5 out of 14 plots valued at	300,000.00
	Property 5: Virgin land located at Km 160 Ilorin Jebba road, Eiyekorin Oko – Olowo road Ilorin. (b) Ground Floor: 1 no. room out of 6 no. rooms valued at	46,907.00
	TOTAL RECEIVED	29,381.004.99
	CREDIT BALANCE	2,236.42

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	GROUP `D' ALHAJA IDOWU UMAR BANNI AND CHILDREN.	ENTITLEMENT N : K 52,462.086.739
S/N	DETAILS OF PROPERTIES RECEIVED	VALUE
1	Property 1: located at Agbo-Oba Area, behind Christ Apostolic Church (C.A.C) Oke-Alafia, Ilorin. Building 4: Consist a Bakery valued at Building 10: Consist 2 no.3 bedrooms and flat. 7, 8, & 9 valued at	5,607,118.00 4,914,118.00
2.	Property 3: located along Olaiya Street, Agbo -Oba, Ilorin.	

	Building 1: Consist flat 1 3 no. bedroom flat 2 3 no bedroom flat 3 3 no bedroom flat 4 3 no bedroom flat 5 3no. bedroom flat 6 3no. bedroom all valued at Building 2 Consist flat 7 3 no. bedroom flat 8 3 no bedroom flat 9 3 no bedroom flat10 3 no bedroom flat11 3no. bedroom flat12 3no. bedroom all valued at	17,392,999.98 10,910,000.00
3.	Property 8: located at No. 1018 and No.215 Oja-Tuntun, Baboko area, Ilorin (a) Shop 1 No.1018 (b) Shop 2 No. 215 valued at	**460,545.00**
4	Property 10: Located along Ogidi/Oko – Olowo road by Government Technical College Junction, Ilorin. Consist 13 no. Plots out of 14 plots. Plots 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13 and 14 valued at	4,400,000.00
5.	Property 12: located at Isale –Banni area via Banni Community Secondary School, Alore, Ilorin. Consist a bare land of 2 plots measuring 200 FT/50FT	300,000.00

	Plot 1 = 50 FT /100 FT Pltot 2 = 50 FT/100 FT Valued at	
TOTAL RECEIVED		54,316,670.39
DEBIT BALANCE		1,854,483.65

7.01. APPRECIATION:

Both Alhaji Adelodun Orilonise and Muslimat Umar Banni thanked the panel for a successful job done and prayed for long life and prosperity for the panel.

9.01 CLOSING REMARKS:

The panel directed the heirs to continue to pray for the repose of the soul of their late husband and father and to use whatever inherited judiciously.

9. 01. CLOSING PRAYER:

The meeting closed with prayer led by both Hon. Kadi S.M. AbdulBaki and Hon. Kadi A.A. Owolabi at 4. 00 p.m.

SGD	**SGD**
(HON. KADI S.O. MUHAMMAD)	**(YUSUF M. GBALASA)**
CHAIRMAN	**SECRETARY**
11/10/2010	**11/10/2010.**

Family Of Late Daudu Ballah
No. 1 Bawa Lane
Off Princess Road,
Ilorin.

The Hon. Grand Kadi,
Kwara State Shariah Court Of Appeal,
Ilorin.

Dear Sir,

APPLICATION FOR THE SHARING OF THE ESTATE OF LATE ALHAJI S.A.P. MUHAMMAD LAUFE

With humility and respect we the children of Late Alhaji Sa'adudeen Alao Popo'Ola Muhammed Laufe (who died on the 13th September, 2010 at University of Ilorin Teaching Hospital) do apply to your Lordship to kindly grant this our application by approving for us the sharing of our late father's property under Islamic Law by your Court.

Attached to this application is the list of all moveable items belonging to our said father together with the name of all the surviving wives and the children.

We shall be very grateful if this application is granted. Thanks.

Yours faithfully,

SGD (08032336727)
(AHMED OLARONGBE) (08035811919)
(FOR AND ON BEHALF OF THE CHILDREN.

THE SURVIVING HEIRS OF LATE ALHAJI SA'ADUDEEN ALAO POPO'OLA MUHAMMAD LAUFE WHO DIED ON THE 13TH SEPTEMBER, 2010.

GROUP 'A' (ALHAJA MARIAM LAUFE)

1. Ahmed Olarongbe
2. Isiaka Olayinka
3. Usman Oladimeji
4. Afusat Afolawiyo
5. Abdulsalam Bolakale

GROUP 'B' (ALHAJA AYISAT LAUFE)

1. Hamidu Afolabi
2. Abdulkadir Oladipo
3. Ahmed Kolapo
4. Hawawu Arinola

GROUP 'C' (MADAM IDOWU LAUFE)

1. Uthman Olatunji
2. Habibat Oyeladun
3. Halimat Olajumoke
4. Muhammed Laufe

GROUP 'D' (MADAM HAJARAT LAUFE)

1. Mariam Olawepo
2. Issa Agbo'ola
3. Zainab Madamidola
4. Abubakar Kolawole

SGD
(**AHMED OLARONGBE**)
(For and on behalf of the family.

MINUTES OF THE PRELIMINARY MEETING ON THE DISTRIBUTION OF THE ESTATE OF THE LATE ALHAJI S.A.P. MUHAMMAD LAUFE HELD AT THE SHARIA COURT OF APPEAL, ILORIN ON THURSDAY 26TH MAY, 2011

1.0 ATTENDANCE

1. Hon. Kadi S.O. Muhammad	Chairman
2. Hon. Kadi A.A. Owolabi	Officiating Minister
3. Alhaji A.R. Ibrahim	Secretary
4. Olayinka Isiaq	Son
5. Olarongbe Ahmed Esq	Son
6. Abdulkadir Oladipo	Son
7. Maryam OLawepo	Daughter
8. Hamidu Afolabi	Son
9. Zainab Gambari	Daughter
10. Afusat Folawiyo	Daughter
11. Alhaji M.J. Dasuki	Asst, Rec. Sec.
12. Yusuf M. Gbalasa	Rec.Sec.

2.00 **OPENING PRAYER**

The meeting opened with prayer led by Hon. Kadi A.A. Owolabi at 11.40a.m.

2.01 **OPENING REMARKS**

The Chairman of the panel, Hon. Kadi S.O.Muhammad welcomed all the family members of the deceased to the meeting and prayed for God's guidance. Meanwhile, he tendered the apology of the 3 officiating Ministers for their inability to attend the meeting. He added that five Kadis would sit on the distribution for the respect His Royal Highest, the Emir of Ilorin Alhaji (Dr.) Ibrahim Sulu-Gambari (OFR).

3.00 **MATTERS ARISING**

3.01 **LETTER OF REQUEST :-** The letter written and signed by Mallam Ahmed Olarongbe for and on behalf of the family was read for confirmation .

3.02 **LIST OF HEIRS:-**

The list of the legal heir, of the deceased was also confirmed as follows:-

GROUP 'A' : (ALHAJA MARIAM LAUFE) (WIFE)

1. Ahmed Olarongbe - Son
2. Isiaka Olayinka - Son
3. Usman Oladimeji - Son
4. Abdulsalam Bolakale - Son
5. Afusat Afolawiyo - Daughter

GROUB 'B' : (ALHAJA AISHAT LAUFE (WIFE)

1. Alhaja Aishat Laufe - Wife
2. Hamidu Afolabi - Son
3. Abdulkadir Oladipo - Son
4. Ahmed Kolapo - Son
5. Hawau Arinola - Daughter

GROUP 'C' : (MADAM IDOWU LAUFE (WIFE)

1. Madam Idowu Laufe - Wife
2. Uthman Olatunji - Son
3. Muhammed Laufe - Son
4. Habibat Oyeoladun - Daughter
5. Halimat Olajumoke - Daughter

GROUP 'D' (MADAM HAJARAT LAUFE (WIFE)

1. Madam Hajarat Laufe - Wife
2. Issa Agboola - Son
3. Abubakar Kolawole - Son
4. Mariam Olawepo - Daughter
5. Zainab Madamidola - Daughter

3.03 Issue outside marriage: Nil.

3.04 **CASH IN BANKS**: Family to report later.

3.05 **LANDS**: Family to report later

CLOSING REMARKS

The panel directed the family to collect and submit all necessary documents relating to the estate of the deceased before the next meeting to ease work of the panel.

Meanwhile, the Chairman of the panel. On behalf of himself and the Emir of Ilorin, His Royal Highness Alhaji (Dr.) Ibrahim Sulu-Gambari thanked the panel for their efforts so far on the matter and prayed for God's guidance for them at all times.

4.01 **ADJOURNMENT:**
The meeting adjourned till when working papers would be ready.

4.02 **CLOSING PRAYER:**
The meeting closed with prayer led by Hon. Kadi A.A. Owolabi at 12.20 noon.

(SGD)	**(SGD)**
(HON.KADI S.O.MUHAMMED	**YUSUF M. GBALASA**
CHAIRMAN	**REC. SEC.**
26/5/2011.	**26/5/2011.**

MINUTES OF THE 2ND MEETING ON THE DISTRIBUTION OF THE ESTATE OF THE LATE ALHAJI S.A.P. MUHAMMAD LAUFE HELD AT THE SHARIA COURT OF APPEAL, ILORIN ON THURSDAY 19TH JULY, 2011.

1.0 **ATTENDANCE:**

1. Hon. Kadi S. O. Muhammad - Chairman
2. Hon. Kadi A.A. Idris - Officiating Minister
3. Hon. Kadi A.A. Owolabi - Officiating Minister
4. Alhaji A.R. Ibrahim - Secretary
5. Gambari Ahmed OLarongbe - Son
6. Laufe Issa Agboola - Son
7. Laufe Abdulkadir O. - Son
8. Ibrahim Mariam O - Daughter
9. Shuaib Zainab M. - Daughter
10. Sulu Gambari Habibat - Daughter
11. Alhaji M.J. Dasuki - Asst. Rec. Sec.
12. Yusuf M. Gbalasa - Rec. Sec.

1.01 **APOLOGY:**

1. Hon. Kadi S.M. AbdulBaki - Officiating Minister
2. Hon. Kadi M.O. Abdulkadir - Officiating Minister

2.00 **OPENING PRAYER:**

The meeting opened with prayer led by Hon. Kadi A. A. Idris at 12.50p.m.

2.01 **OPENING REMARKS:**

The Chairman of the panel Hon. Kadi S.O. Muhammad welcomed all the family members of the deceased to the meeting and

prayed for God's guidance. Meanwhile, the minutes of the last meeting was read and unanimously adopted on motion moved by Isiaka Olayinka and seconded by Issa Agboola respectively.

3.00 **MATTERS ARISING**:

3.01 **CASH:** The panel directed the secretary to write the banks in which the deceased has money for withdrawal and closure of the accounts.

3.02 **LAND** : The panel directed the family to value all the lands belonging to the deceased and submit the report in good time.

3.03 **OKO-OLOWO LAND**: Family to report later.

3.04 **CATTLE**: The panel directed the family to value the cattle of the deceased for distribution.

3.05 **BOOKS:** The panel directed the family to write the panel on Laufe Foundation Library since the panel was verify informed that the books were not for distribution.

4.00 **ADJOURNMENT**: The meeting adjourned till Friday 29th July, 2011.

4.01 **CLOSING PRAYER**: The meeting closed with prayer led by Hon. Kadi A.A. Idris at 1.25p.m.

(SGD)	**(SGD)**
HON. KADI S.O. MUHAMMAD	**(YUSUF M. GBALASA**
CHAIRMAN	**REC. SEC.**
19/7/2011.	**19/7/2011.**

MINUTES OF THE 3RD MEETING ON THE DISTRIBUTION OF THE ESTATE OF THE LATE ALHAJI S.A.P. LAUFE HELD AT THE SHARIA COURT OF APPEAL, ILORIN ON FRIDAY 29TH JULY, 2011.

1.0 **ATTENDANCE:**

1. Hon. Kadi S.O. Muhammad - Chairman
2. Hon. Kadi A.A. Idris - Officiating Minister
3. Hon. Kadi S. M. AbdulBaki - Officiating Minister
4. Gambari Ahmed Olarongbe - Son
5. Sulu-Gambari Hamidu A. - Son
6. Laufe Issa Agboola - Son
7. Laufe Isiaka Olayinka - Son
8. Laufe Abdulkadir Oladipupo - Son
9. Alhaja Mariam Olawepo - Daughter
10. Alhaja Zainab Madamidola - Daughter
11. Alhaja Afusat Afolawiyo - Daughter
12. Alhaji M.J. Dasuki - Asst. Rec.Sec
13. Yusuf M. Gbalasa - Rec.Sec.

1.1 **APOLOGY**: NIL.

2.0 **OPENING PRAYER:** The meeting opened with prayer led by Hon. Kadi A.A. Idris at 11.30a.m.

3.0 **OPENING REMARKS**: The Chairman of the panel, Hon. Kadi S.O. Muhammad welcomed all the family members of the deceased to the meeting and prayed for God's guidance.

4.0 **MATTERS ARISING:**

4.1 **PHYSICAL SHARING OF PERSONAL EFFECTS DISTRIBUTION**

4.2 **DISTRIBUTION OF THE ESTATE OF THE LATE ALHAJI S.A.P. MUHAMMAD LAUFE**

PERSONAL EFFECTS DISTRIBUTION

WORKING PAPER 'A'

LIST OF HEIRS:

GROUP 'A'

1. Alhaja Mariam Laufe - Wife
2. Ahmed Olarongbe - Son
3. Isiaka Olayinka - Son
4. Usman Oladimeji - Son
5. Abdulsalam Bolakale - Son
6. Afusat Afolawiyo - Daughter

GROUP 'B'

1. Alhaja Aishat Laufe - Wife
2. Hamidu Afolabi - Son
3. Abdulkadir Oladipo - Son
4. Ahmed Kolapo - Son
5. Hawau Arinola - Daughter

GROUP 'C '

1. Madam Idowu Laufe - Wife
2. Uthman OLatunji - Son
3. Muhammed Laufe - Son

4. Habibat Oyeoladun - Daughter
5. Halimat Olajumoke - Daughter

GROUP 'D'

1. Madam Hajarat Laufe - Wife
2. Issa Agboola - Son
3. Abubakar Kolawole - Son
4. Mariam Olawepo - Daughter
5. Zainab Madamidola - Daughter

WORKING PAPER 'B'

OTOLORIN (NIG) ENTERPRISES
VALUATION REPORT AFFECTING THE MOVABLE PROPERTIES OF THE LATE DISTRICT HEAD OF OWODE DISTRICT ALHAJI MUHAMMAD SA'ADUDEEN ALAO POPO'OLA MUHAMMAD LAUFE, WHO DIED ON THE 13TH SEPTEMBER, 2010.

S/N	ITEMS	QUATITY	VALUE	TOTAL
1	CLOTH MATERIALS		N : K	N : K
a)	New	17	500. 00	8,500.00
b)	Big	5	750. 00	3,750.00
c)	Agbada (only)	6	300. 00	1,800.00
d)	Agbada with Buba	6	50. 00	300.00
	Kaftans with Sokoto	3	250. 00	750.00
e)				

	Togo gown (only)	5	60. 00	300.00
f)				
g)	Jackets & Trousers	4	250. 00	750. 00
h)	Trousers (only)	10	150. 00	1,500. 00
i)	Aliqibans	12	600. 00	7,200.00
j)	Jalabs (Complete)	2	350. 00	700.00
k)	Jalabs with trousers	2	150. 00	300.00
L)	Falmara (only)	2	100. 00	200.00
m)	Falmara trouser	1	100. 00	100.00
n)	Jalabiyas	29	250. 00	7,200.00
o)	Pajamas	4	200. 00	800.00
p)	Cardigans	2	40. 00	80.00
q)	Short Knickers	7	40. 00	280.00
r)	Agbada (Complete)	60	400. 00	24,000.00
s)	Turbans (fashion)	6	60. 00	360. 00
t)	Buba with Sokoto (used)	3	150. 00	450.00
u)	Lawani (Turbans)	38	200. 00	7,600. 00
v)	Curtains	53	200. 00	10,600.00
w)	Bed Sheets	31	300. 00	9,300.00
x)	Pillow Cases	23	50. 00	1,150.00
y)	Handkerchief	54	50. 00	27. 00
z)	Towels	2	250. 00	500.00

Managing Director:- Alhaji Abdu Otolorin

S/N	ITEMS	QUALITY	VALUE	TOTAL
	CLOTH MATERIALS		**N : K**	**N : K**
	Small (Used)	5	100. 00	500. 00
	TOTAL =			**N88,997.00**
2	**CAPS**			
a)	Aburos	5	150. 00	750. 00
b)	Makawe's	17	200. 00	3,400. 00
c)	Aboti Aja (Local)	4	200. 00	800.00
d)	Asee Mecca	4	100. 00	400.00
e)	Goo'bi (local)	8	100. 00	800.00
f)	Dan Bornu	8	250. 00	2,000.00
g)	White (Mecca)	4	100. 00	400.00
h)	Mecca (Fashion)	6	100. 00	600.00
	TOTAL =			**N9,150.00**
3	**PRAYING MATS**			
a)	Small Size	11	150. 00	1,650.00
b)	Big Size	7	300. 00	2,100.00
c)	Local Traditional			
	I Small	7	300. 00	600 . 00 2,100.00
	ii Long	2		400 1,200.00
	iii Medium	1		400. 00

	TOTAL =			**N7,450.00**
	ELECTRONICS			
4	TELEVISION SETS	3 i.e		
a)	I Nulec (Used)	1	3,500	3,500.00
	Ii Samsung (used)	1	4,000	4,000.00
	iii. Sharp (New)	1	10,000	10,000.00
	VIDEO MACHINES	2i.e.		
b)	i Panasonic (Used)	1	1,000. 00	1,000. 00
	ii Digital (used)	1	1,000. 00	1,000. 00
	FANS	10 i.e		
c)	i. Ceiling Fan used	5	750. 00	3,750.00
	ii. Standing used KDK Model	1	1,500.00	1,500. 00
	Crown Model (damaged)	1	800.00	800.00

S/N	ITEMS	QUALITY	VALUE N : K	TOTAL N : K
	Iii Table (Used)			
	KDK	1	500. 00	600. 00

	Eleganza	1	600. 00	600. 00
	Binatone	1	600. 00	600. 00
d)	Stablizer (used)	1	500. 00	500. 00
e)	PHCN Meter (used)	1	6,000. 00	6,000. 00
f)	Generator used Timex	1	6,000.00	6,000. 00
	TOTAL=			**N39,750**
5.	**FURNITURES**			
a)	CUSHION SET (CHAIRS)	8 i.e		
	I Brown (colour)	3pieces		1,000.00
	Ii Green ditto	Ditto		1,200.00
	Iii Blue ditto	4pieces		1,500.00
	iv. Leather (green)	2 pieces		800. 00
	v. Set (2 setters & 3 setters)			800. 00
	vi. set (2 detachable with foam			600.00
	vii Set (another blue)			900.00
	viii Single			600.00
	ix. Golden (colour)			5,000. 00
b)	**CUPBOARDS**	10 pieces		
	i. Big	3pieces	1,500.00	4,500. 00
	ii. Medium	2pieces	800.00	2,400.00
	iii. Small	4 pieces	500. 00	2,000. 00

	TOTAL =			**N21,300.00**
===	==========	======	========	========
6	**BEDDING & FOAMS**			
a)	IRON BEDS	15 pieces		
	i. Big (family)	4pieces	2,500.00	10,000.00
	ii. Small	11pieces	1,500.00	16,500.00
b)	**MATTRESSES**	14pieces		
	i. Size (4 1/2)	5 pieces	500.00	2,500. 00
	ii. Size (3 1/2)	3pieces	400.00	1,200. 00
	iii. Size (1 1/2)	6pieces	300.00	1,800. 00
c)	**PILLOWS**	24pieces	50. 00	1,200. 00
d)	**BLANKETS**	32pieces	250.00	8,000. 00
	TOTAL =			**N41,200.00**
7	**OTHERS**			
a)	Mosquito Nets	3pieces	300. 00	900. 00
b)	Wall Clocks	11pieces	250. 00	2,750.00
c)	Hot Water (Flask)	3pieces	500. 00	1,500.00
d)	Sandals (half)	3pieces	350. 00	1,500.00
e)	Carpets (Rug)	9pieces	…….	3,150. 00
f)	Iron Chairs	5pieces	……	1,500. 00
g)	Plastic drums (medium)	3pieces	1,500.00	4,500. 00

h)	Big Iron tank	1	……..	1,500. 00
i)	Small Iron tank	3pieces	500.00	1,500. 00
j)	New Lantern (bush)	3pieces	350.00	1,050. 00
	TOTAL =			**N19,400.00**
8	**AUTOMOBILES**			
a)	Peugeot Saloon Car504	1		50,000.00
b)	Isuzu Trooper (jeep)	1		70,000.00
c)	Mistubishi Space(family	1		350.000.00
	TOTAL =			**N470,000**

The Attached List Of The Tea And Refreshment Cups And Jugs Totaling The Sum Of **N13,000.00**

GROUND TOTAL = N710,347.00

VALUER

As The Time Of My Inspecting The Movable Properties Of The Subject, I Am Of The Honest Opinion That The Above Stated Valued Properties Items I To 8 Worth N710,347.00 Seven Hundred And Ten Thousand, Three Hundred And Forty Seven Naira Only.

SGD
ALHAJI A. OTOLORIN,
GOVERNMENT LICENSED AUCTIONEER
No. 22 PRINCESS ROAD, ILORIN,
KWARA STATE.

TEA AND REFRESHMENT/ENTERTAINMENT GADGETS LIST AND ESTIMATION

S/N0	ITEMS	QUALITY	PRICE PER ONE	TOTAL
A	**GLASS MATERIALS**		**N : K**	**N : K**
1.	TEA JUGS	8	14.33	114. 64
2.	MILK JUGS	5	14.33	71. 65
3.	DRINKING CUPS	50	14.33	71. 65
4.	TEA CUP WITHOUT SOURCES	19	14.33	272.27
5.	TEA CUP WITHOUT SOURCES	29	14.33	415. 57
6.	SMALLEST DRINKING CUPS	5	14.33	71. 65
7.	WISKEY DRINKING SETS	2	14.33	28.66
8.	SOUP PLATES	21	14.33	300. 93
9.	SUGAR/SALT CONTAINERS	6	14.33	85.98
10.	SMALLEST SERVING TRAYS	2	100. 00	200. 00
11.	SORCERS WITHOUT CUP	35	14.33	501.55
12.	FLOWER VASE	2	14.33	28.66
13.	SERVING BOWELS	6	14.33	85.98
14.	SERVING PLATES	16	14.33	229. 28
	TOTAL			**N3,123.32**
B	**IRON MATERIALS**			
1.	BIG SERVING BOWELS	27	14.33	386.91

2.	SERVING TRAYS (WITH PRE YANDUA PHOTO	20	14.33	286. 6

A	**ITEMS**	**QUALITY**	**PRICE PER ONE**	**TOTAL**
			N : K	N : K
3.	SMALL TRAYS (BOUGHT FROM MECCA	4	14 . 33	57. 32
4.	MEDIUM TRAY	1	100. 00	100. 00
5.	STOCK POT LIKE BOWL	1	100. 00	100. 00
6.	BIG DRINKING CUPS	1	100. 00	100. 00
7.	KETTLES	6	14. 33	85. 98
8.	WASHING BOWLS	2	100. 00	200. 00
9.	TEA SPOONS	121	14. 33	1,733.00
10.	TABLE SPOONS	125	14. 33	1,791. 25
11.	TABLE KNIVES	26	14. 33	372. 58
12.	TABLE FORKS	49	14. 33	702. 17
13.	CUTTING KNIVES	4	14. 33	57. 32
14.	TABLE SCISSORS	3	14. 33	42. 99
15.	TIN CUTTERS	6	14. 33	85. 98
	TOTAL			**N6,103. 33**
C.	**ALUMINIUM MATERIAL**			
1.	SOUP PLATES	4	14. 33	57. 32
2.	DRINKING CUPS	2	100. 00	200. 00
3.	BIG SERVING TRAY	1	100. 00	100. 00

4.	GOMBO (DRINKING SPOONS	8	14. 33	114. 64
D	**UNBREAKABLE MATERIALS**			
1.	WATER DRINKING JUG	1	100. 00	100. 00
2.	DRINKING CUPS	9	14. 33	128. 97
3.	SERVING BOWLS	2	14. 33	28. 66
4.	SERVING PLATE	10	14. 33	14. 33
5.	SPOONS	10	14. 33	14. 33
	TOTAL			**N544. 32**
E.	**STAINLESS MATERIALS**			
1.	TEA/WATER JUGS	3	14. 33	42. 99
2.	BIG DRINKING CUPS	2	14. 33	28. 66
3.	MEDIUM DRINKING CP	16	14. 33	229. 28
4.	SMALLEST DRINKING CP	3	14. 33	42. 99
5.	SERVING TRAYS	4	14. 33	57. 32
6.	BIG SERVING BOWLS SETS	10	14. 33	143. 3
7.	SERVING PLATES	6	14. 33	85. 98
8.	SOUP PLATES	3	68. 33	205. 00
	TOTAL			**N835. 52**
F.	**PLASTIC MATERIALS**			
1.	BIG WATER CONTAINER	16	14. 33	229. 28
2.	MEDIUM WATER CONT.	13	14. 33	186. 29
3.	SMALL WATER CONT.	13	14. 33	186. 29
4.	PLASTIC SPOONS	24	14. 33	343. 92
5.	GAMBO	4	14. 33	57. 32

6.	HAND WASHING BOWL	4	14. 33	107. 32
7.	TRAY	1	100. 00	100. 00
8.	SPONGE CASES	2	14. 33	28. 66
9.	SOAP CASES	2	14. 33	28. 66
10.	EGG CONTAINER	1	100. 00	100. 00
11.	SMALL BASKET	6	14. 33	85. 98
12.	SERVING PLATE	7	14. 33	100. 31
	TOTAL			**N1,553. 72**
G.	**OTHERS**			
1.	RAIN BOOTS	2	100. 00	200. 00
2.	COOKING STOVE	1	100. 00	100. 00
	TOTAL			**N300. 00**

GROUND TOTAL = N13,000.00

WORKING PAPER 'C'

FRACTIONAL SHARES OF PERSONAL EFFECTS DISTRIBUTION

TOTAL = N 709,707. 21

1/8 OF 609, 707.21 = 88,713. 41 FOR THE WIVES

88, 713. 401 -· 4 = 22, 178. 350 FOR EACH WIFE

Balance = 620,993 for 11 sow 6 Daughters

11 Sons = 22

6 Daughters = 6

28 Working Figure

i. e each Daughter will have 22, 178. 350 worth of the estate while each Son will have twice 44, 356.700 worth of the estate.

1- Wife = 22, 178 .350 x 4 = 88, 713. 401

2. Son = 44, 356. 700 x 6 = 133, 070 . 100

3. Daughter = 22, 178. 350 x 6 = 133, 070. 100

GRAND TOTAL = N 709, 707. 20

WORKING PAPER 'D'

FRACTIONAL SHARES OF PERSONAL EFFECTS DISTRIBUTION

GROUP 'A'

		ENTITLEMENT
1. Alhaja Mariam laufe	(Wife)	22, 178. 350
2. Hamidu Afolabi	(Son)	44, 356. 700
3. Abdulkadir Oladipo	(Son)	44, 356. 700
4. Ahmed kolapo	(Daughter)	22, 178. 350

TOTAL = N 177,426. 8

GROUP 'C'

1- Madam Idowu Laufe	(Wife)	22, 178, 350
2- Uthman Olafunji	(Son)	44, 356. 700
3- Muhammed Lausa	(Son)	44, 356. 700
4- Habibat Olajumoke	(Daughter)	22, 178. 350.
5- Halimat Olajumoke	(Daughter)	22, 178. 350

TOTAL = 155, 248 .45

GROUP 'D'

1- Madam Hajarat Laufe (Wife) 22, 178. 350
2- Issa Agbolola (Son) 44, 356. 700
3- Abubakar kolawole (son) 44, 356. 700
4- Mariam Olawepo (Daughter) 22, 178. 350
5- Zainab Madamilola (daughter) 22, 178. 350

TOTAL = N 155, 248. 45

GROUP SUMMARY

1. Group 'A = 221, 783. 5
2. Group 'B' = 177, 426. 8
3. Group 'C' = 155, 248. 45
4. Group 'D' = 155, 248. 45

GRAND TOTAL = N709, 707 .2

WIFE (1) ENTITLEMENT 22, 178. 350

Madam Idowu Laufe

S/N	ITEMS	QUANTITY	AMOUNT
1	New cloths	+ 2	1000 .00
2	Small size prayer mat	2	300.00
3	Television Nulec	1	3500.00
4	Iron bed big	1	2500.00
5	Mattress 4 ½	1	500.00
6	Cupboard Big	1	1.500.00
7	Plastic drum (Medium)	1	500. 00
8	Tea jugs	2	28. 66

9	Milk Jugs	5	71. 65
10	Furniture 1 Brown (colour)	3 picas	1000. 00
11	Fan Eleganza	1	600.00
12	Wall clocks	3	750. 00
13	Iron chairs	5	1,500.00
14	Blankets	8	2000.00
15	Cupboard Small	1	500. 00
16	Big Serving Bowels (iron Materials)	27	386. 91
17	Furniture set (2 setters & 3 setters	-	800.00
18	Tea Spoons	121	1, 733.93
	Class materials	2	28. 66
19	7- Whiskey Drinking set	2	
20	8- Soup Plates	21	300. 93
21	9- Sugar /Salt containers	6	85. 98
22	10 – Smallest serving trey	2	200 .00
23	11- Sorceress without cup	35	501 .55
24	12- Flowers Vase	2	28. 66
25	13- Serving Bowels	6	85. 98
26	14 Serving Plates	16	
27	Big water containers (plastic	16	229.28

	mat.)		
28	Medium water containers (P/m)	13	229. 28
29	Soap cases (plastic mat)	2	186. 29
30	Egg containers (plastic mat)	1	28. 00
	TOTAL=		22,176. 42

WIFE (2) ENTITLEMENT 22, 178. 350

Madam Hajarat Laufe

S/N	ITEMS	QUANTITY	AMOUNT
1	New cloths	2	1000 .00
2	Small size praying mats	2	300.00
3	Television Samsung (used)	1	4000.00
4	Iron bed big	1	2500.00
5	Mattress 4 ½	1	500.00
6	Cupboard Big	1	1. 500.00
7	Plastic drum (Medium)	1	1. 500. 00
8	Tea jugs	2	28. 66
9	Drinking cups (class material)	50	716. 5
10	Furniture Green ditto	Ditto	1200. 00

11	Fan Binatone	1	600.00
12	Wall clocks	2	500. 00
13	Rug carpet	5	1,500.00
14	Blankets	9	3, 150.00
15	Cupboard Small	8	2,000. 00
16	Serving tray (with pre yandua phone)	1	500.00
17	Furniture set (2 detachable with Foam) plastic materials	-	600.00
18	4 plastic spoons	24	343 -921, 733.93
	Class materials	2	28. 66
19	5- Gombo	4	57
20	6- hand washing Bowls	4	107.32
21	7- tray	1	100. 00
22	8 – Sponge cases	2	200 .00
23	11- small basket	6	85. 98
24	12- Serving Plates	7	100.00
25	Ram boots	6	200.00
26	Cooking stove	2	
27	Iron materials	1	

28	13- cutting knifes	3	42.99
29	14- Table scissors	2	186. 29
30	Soup plate (Alumnus Material)	4	57.32
	TOTAL=		22,162. 9

WIFE (3) ENTITLEMENT 22, 178. 350

Alhaja Aishat Laufe

S/N	ITEMS	QUANTITY	AMOUNT
1	New cloths	2	1000 .00
2	Small size praying mats	2	300.00
3	Generator (used Tamers)	1	6000.00
4	Iron bed big	(1)	2500.00
5	Mattress 4 ½	1	500.00
6	Cupboard Big	1	500.00
7	Tea jugs	2	28.66
8	Tea cup without sorceress	19	272. 27
9	Furniture Green ditto)	Ditto	600.00
10	Fan KDK Table Fan	1	500. 00
11	Wall clocks	2	600.00
12	Mosquito nets	3	900. 00

13	Small iron Tank	3	1,500.00
14	Blankets	8	2,000.00
15	Cupboard Small	1	5,00. 00
16	Small trey from mecca	4	75.32
17	1- water Drinking jug	1	100
18	2- Drinking cups	9	128.97
19	3- Serving Bowls	2	28. 66
20	4- Serving Plate	10	143. 3
21	5- spoons	10	143. 3
22	Mattress size 3 ½	1	400. 00
23	Smallest drinking cups	5	71. 65
24	Big Iron Tank	1	1500.00
	TOTAL=		22, 174 .13

WIFE (4) ENTITLEMENT 22, 178. 350

Alhaja Mariam Laufe

S/N	ITEMS	QUANTITY	AMOUNT
1	New cloths	2	1000 .00
2	Small size praying mats	2	300.00
3	Long size praying mat	2	1,200.00
4	Standing KDK Fan	1	1, 500
5	Iron bed big	1	2,500.00

6	Mattress size 4 ½	1	500.00
7	Cupboard medium	1	800.00
8	Mattress size 3 ½	1	1200.00
9	Plastic drum (medium)	7	1500.00
10	Tea Jugs	2	28. 66
11	Tea cups with sorceress	29	
12	Furniture Leather green	2	415. 57
13	Stablizer	1	800. 00
14	Wall clocks		500.00
15	Hot water flask	2	500.00
16	New lantern (bush)	3	1.500.00
17	Blankets	3	1050.00
18	Cupboard Small	8	2000.00
19	Medium Tray	1	500.00
	Stainless Materials	1	100.00
20	1- Tea 1 water Jug	3	42. 99
21	2- Big Drinking cups	2	28. 66
22	3- Medium Drink cups	16	229. 28
23	4- Smallest Drink cups	3	42. 99
24	5- Serving Tray	4	57. 32
25	6- Big serving Bowls (Sets)	10	143

26	7- Serving plates	6	85.98
27	8- Soup Plates	3	205 . 00
28	Kettles	6	85 .98
29	Tin cutters	6	85.98
30	Table spoons	125	1, 791. 25
31	Table knives	26	372 . 58
32	Table Forks	49	702 .17
33	Big Drinking Cup	1	100.00
	Praying mat Big size	1	300.00
	TOTAL=		22,167.66

Son 1 Usman Oladimeji

Son I. Entitlement **N44, 356.700**

S/NO.	ITEMS	QUALITY	AMOUNT
1.	Peugeot (504)	1/2 Of The Money	N25,000.00
2.	Cloth Big	3	N2,500.00
3.	Agbada Only	3	N900.00
4.	Kaftan And Sokoto	3	N750.00
5.	Agbada Complete	5	N2,000.00
6.	Lawanin (Turban)	2	N400.00
7.	Caps Aburo	3	N450.00
8.	Abeti Aja	2	N400.00
9.	Praying Mat Small Size	1	N450.00

10 Video Panasonic	1	N1,000. 00
11. Furniture Set (Mother Blush)	3	N900.00
12. Golden Colour	2	N2,500.00
13. Phcn Meter	1	N6,000.00
14. Jalabiya	3	N750.00
15. Pajamas	2	N400.00
16. Alum Inium Drinking Cups	2	N200.00
TOTAL =		**N44,350.00**

Son 2 Abubakar Kolawole

Son (2) Entitlement **N44,356. 700**

S/NO	ITEMS	QUALITY	AMOUNT
1.	Peugoet (504)	1/2 Of The Money	N25,000
2.	Cloths Big	2	N1,500
3.	Agbada Only	3	N900.00
4.	Jacket And Trouser	4	N750.00
5.	Agbada Complete	5	N2,000.00
6.	Lawani (Turban)	2	N600. 00
7.	Aburo Cap	1	N150.00
8.	Abeti Aja	2	N400.00
9.	Praying Mat Big Size	3	N900.00
10.	Video Digital	1	N1,000.00

11. Furniture Single	2	N600.00
12. Golden Colour	2	N2,500.00
13. Jalabiya	3	N750.00
14. Pajamas	2	N400.00
15. Sandals (Half)	3	N1,500.00
16. Pillows	4	N200.00
17. Iron Bed Small	2	N3,000.00
18. Ceiling Fan	2	N1,500.00
19. Jalabi	2	N700.00
TOTAL =		**N44,350.00**

Son 3 Uthman Olatunji

Son 3 Entitlement **N44,356.700**

S/NO.	ITEMS	QUALITY	AMOUNT
1.	Mistubishi Space (Family)	1/9 Of The Money	38,888.8
2.	Agbada Complete	5	N2,000.00
3.	Trousers Only	5	N750.00
4.	Ase Mecca	1	N100.00
5.	Aburo (Cap)	1	N150.00
6.	Stock Pot Like Bowl	1	N100.00
7.	Big Drinking Cup	1	N100.00
8.	Curtains	10	N2,000.00

9. Handcherfs	50	N27.00
10. Soup Plates	4	N57.32
11. Togo Gown (Only)	3	N180.00
TOTAL =		**N44,353.12**

Son 4 Hamidu Afolabi

Son 4 Entitlement **N44,356.700**

S/NO.	ITEMS	QUALITY	AMOUNT
1.	Mistibushi Space Family	1/9 Of The Money	38,888.8
2.	Agbada Complete	5	N2,000.00
3.	Jalabiyas	8	N750.00
4.	Ase Mecca	1	N100.00
5.	Bed Sheets	5	N1,500.00
6.	Makawiya	4	N800.00
7.	Falmara Only	2	N200.00
8.	Iron Materials		
13	Cutting Knules	4	N57. 32
14	Table Scissors		N42. 99
	TOTAL=		**N44,339.11**

Son 5 Muhammed Laufe

Son 5 Entitlement **N44,356.700**

S/NO.	ITEMS	QUALITY	AMOUNT
1.	Mistubishi Space Family	1/9	38,888.8
2.	Agbada Complete	5	N2,000.00

3. Jalabiya	1	N250.00
4. Ase Mecca	1	N100. 00
5. Alikinba	1	N600.00
6. Dan Borno	4	N1,000.00
7. Iron Bed Small	1	N1,500.00
T0TAL =		**44,388.8**

Son 6 Abdulsalam Bolakale

Son 6 Entilement **N44, 356.700**

S/NO.	ITEMS	QUALITY	AMOUNT
1.	Mistubishi Space Family	1/9	38,888.8
2.	Agbada Complete	5	N2,000.00
3.	Jalabiya	1	N250.00
4.	Iron Beds Small	2	N3,000.00
5.	Big Serving Tray	1	N100. 00
6.	Gambo Drinking Spoon	8	N114. 00
	TOTAL =		**N44,353.44**

……

Son 7 Isiaka Olayinka

Son 7 Entitlement **N44,356.700**

S/NO.	ITEMS	QUALITY	AMIOUNT
1.	Mistsubishi Space Family	1/9	N38,888.8
2	Agbada Complete	5	N2,000.00

3. Jalabiya	2	N500. 00
4. Iron Beds Small	2	N3,000.00
TOTAL=		**N44,388.8**

……

Son 8 Ahmed Olarongbe

Son 8 Entitlement **N44, 356.700**

S/NO.	ITEMS	QUALITY	AMOUNT
1.	Mistubishi Space Family	1/9	38,888.8
2.	Gob I Local	1	N100.00
3.	Mattress 1 1/2	1	N300.00
4.	Agbada Complete	5	N2,000.00
5.	Jalabiya	2	N500.00
6.	Curtains	5	N1,000.00
7.	Lawani (Turban)	8	N1,600.00
TOTAL=			**N44,388.8**

Son 9 Ahmed Kolapo

Son 9 Entitlement N44,356.700

S/NO.	ITEMS	QUALITY	AMOUNT
1.	Mistubishi Space Family	1/9	N38,888.8
2.	Gobi Local	2	N200.00
3.	Agbada Complete	5	N2,000.00

4. Jalabiya	3	N250.00
5. Pillow Case	11	N550.00
6. Towels Big	2	N500.00
7. Turban Fashion	3	N180.00
8. Alikinba	1	N600.00
9. Lawani (Turban)	3	N600
TOTAL =		**N44,358.8**

……..……

Son. 10 Issa Agboola

Son 10 Entitlement **N44,356.700**

S/NO.	**ITEMS**	**QUALITY**	**AMOUNT**
1.	Mistubishi Space Family	1/9	N 38,888. 00
2.	Agbada With Buba	3	N150.00
3.	Jalabiya With Trouser	1	N300.00
4.	Agbada Complete	5	N2,000.00
5.	Jalabiya	4	N1,000.00
6.	Curtains	10	N2,000.00
7	Falmara Trouser Only	1	N100.00
	TOTAL =		**N44,348.8**

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Son 11 Abdulkadir Oladipo

Son. 11 Entitlement **N44,356.700**

S/NO.	ITEMS	QUALITY	AMOUNT
1.	Mistubishi Space Family	1/9	N 38,888.8
2.	Jalabiya With Trouser	2	N300.00
3.	Lawani (Turban)	3	N600.00
4.	Makuwais	3	N600.00
5.	Dan Borno	1	N250.00
6.	Agbada With Buba	3	N150.00
7.	Togo Gown (Only)	1	N60.00
8.	Trousers (Only)	5	N750.00
9.	Alikinba	1	N600.00
10.	Agbada Complete	5	N2,000.00
11.	Buba With Sokoto (Uses)	1	N150.00
	TOTAL=		**N44,348.8**

Daughter 1 Hawau Arinola

Daughter 1 Entitlement **N22,178.350**

S/NO.	ITEMS	QUALITY	AMOUNT
1.	Isuzu Trooper Jeep	1/5	N14,000.00

S/NO.	ITEMS	QUALITY	AMOUNT
2.	Jalabiya	2	N500.00
3.	Alikinba	2	N1,200.00
4.	Bed Sheet	5	N1,500.00
5.	Mecca Fashion	2	N300.00
6.	Curtains	5	N1,000.00
7.	Lawani (Turban)	3	N600.00

8. Makuwais	3	N600.00
9. White Mecca	4	N400.00
10. Mattress 1 1/2	2	N600.00
11. Iron Bed Small	1	N1,500.00
TOTAL=		**N22,200.00**

.....

Daughter 2 Zainab Madamidola

Daughter 2 Entitlement **N22, 178.350**

S/NO.	ITEMS	QUALIT	AMOUNT
1.	Isuzu Tropper Jeep	1/5	N14,000.00
2.	Fan Grown Model (Damaged)	1	N800.00
3.	Jalabiyas	2	N500.00
4.	Alikinba	2	N1,200.00
5.	Mecca Fashion	3	N300.00
6.	Bed Sheets	5	N1,500.00
7.	Iron Bed Small	2	N3,000.00
8.	Curtains	4	N800.00
9.	Cadigen	2	N80.00
	TOTAL =		**N22,180.00**

Daughter 3 Halimat Olajumoke

Daughter 3 Entitlement **N22,178.350**

S/NO.	ITEMS	QUALITY	AMOUNT
1.	Isuzu Tropper Jeep	1/5	N14,000.00
2.	Jalabiya	2	N500.00
3.	Alikinba	2	N1,200.00

4. Bed Sheets	5	N1,500.00
5. Iron Bed Sheet	1	N1,500.00
6. Cloth New	3	N1,500.00
7. Makawiyas	4	N800.00
8. Curboard Medium	2	N1,000.00
9. Pillow Case	4	N200.00
TOTAL =		**N22,200.00**

Daughter 4 Afusat Afolawiyo

Daughter 4 Entitlement **N22,178.350**

S/NO.	ITEMS	QUALITY	AMOUNT
1.	Isuzu Tropper Jeep	1/5	N14,000.00
2.	Cloth New	2	N1,000.00
3.	Praying Mat (Local Trd)Small	7	N2,100.00
4.	Praying Mat (Local Trd)Med.	1	N400.00
5.	Fan Kdk Standing	1	N1,500.00
6.	Mattress 1 1/2	3	N900.00
7.	Pillow	10	N500.00
8.	Agbada Complete	2	N800.00
9.	Bed Sheet	3	N900.00
10.	Lawani (Turban)	5	N1,000.00
	TOTAL =		**N22,100.00**

Daughter 5 Mariam Olawepo

Daughter 5 Entitlement **N22, 178.350**

S/NO.	ITEMS	QUALITY	AMOUNT
1.	Isuzu Tropper Jeep	1/5	N14,000.00
2.	Agbada Complete	3	N1,200.00
3.	Buba With Sokoto	2	N300.00
4.	Lawani (Turban)	5	N1,000.00
5.	Curtains	12	N2,400.00
6.	Pillow Case	8	N400.00
7.	Short Kriker	7	N280.00
8.	Gobi Local	5	N500.00
9.	Danbarno	3	N750.00
10.	Makawais	3	N600.00
11.	Togo Gown Only	1	N60.00
12.	New Cloth	1	N500.00
	TOTAL =		**N22,170.00**

……

Daughter 6 Habibat Oyeladun

Daughter 6 Entitlement **N22,178.350**

S/NO	ITEMS	QUALITY	AMOUNT
1.	Electornic Sharp New	1	N10,000.00
2.	Bed Sheets	3	N900.00

3. Cloth New	4	N2,500. 00
4. Lawani (Turban)	5	N1,000.00
5. Curtains	7	N1,400.00
6. Praying Mat Big Size	3	N900.00
7. Fan Ceiling Fan	3	N2,250.00
8. Matress 41/2	1	N500.00
9. Pillow	10	N500.00
10. Towels Small Used	5	N500.00
11. Alikinba	2	N1,600.00
12. Jalabiya	1	N250.00
TOTAL =		**N22,080.00**

CLOSING REMARKS

The panel admonished the heirs to see themselves as one and continue pray for the repose of the soul of their late father and husband.

APPRECIATION

Mallam Ahmed Olarongbe on behalf of the whole family and the heirs thanked the panel for a successful job done over the distribution of the estate of the Late Alhaji S.A.P. Laufe. He prayed for God's protection and guidance for the members of the panel.

CLOSING PRAYER

The meeting closed with prayer led by Hon. Kadi S.M. AbdulBaki at 1.25p.m.

(SGD)	**(SGD)**
(HON. KADI S.O.MUHAMMAD	**(YUSUF M. GBALASA)**
CHAIRMAN	REC. SEC.
29/7/2011	29/7/2011

No1, Kaima Raod
Opposite UBA Bank,
Idi- Ape Area,
Ilorin,
Kwara State.

20TH December, 2010

Hon. Grand Kadi
Sharia Court of Appeal
Ilorin.

Salamu Alaekun,

DISTRIBUTION OF THE ESTATE OF THE LATE MALLAM AHMED ADISA

With respect and humble we write to seek the assistance of your lordship in the distribution of the Estate of Late Mallam Ahmed Adisa in accordance with the provisions of the Islamic Law.

We will be very grateful to your early response

Thanks.

Yours Faithfully,
SGD
Mr, AbdulFatai Adisa
08051134456/ 08035749827
For: The Family

LIST OF HEIRS

GROUP 'A'

(1)	Mrs. Abibat	(DIVOIRCED WIFE)
(2)	Adisa Asmau	Daughter
(3)	Adisa AbdulFatai	son

GROUP 'B'

(1)	Mrs. Belawu	(DOIVORCED WIFE)
(2)	Adisa	son

GROUP' C '

(1)	Mrs. Adisa Asiata	WIFE
(2)	Adisa Ibrahim	son
(3)	Adisa Amuda	son
(4)	Adisa AbdulFatai	son

LIST OF PROPERTIES

(a) IDI-APE STREET BARUBA AREA ILORIN
   1. 12 Rooms

(b) NO1, KAIMA ROAD IDI-APE AREA ILORIN
   1.4 Rooms
   2.5 Shops

MIUNTES OF THE PRELIMINARY MEETING ON THE DISTRUBUTION OF THE ESTATE OF THE LATE MALLAM AHMED ADISA HELD AT THE SHARIA COURT OF APPEAL, ILORIN ON MONDAY 24TH OF JANUARY, 2011.

1.01 ATTENDANCE:

1.	Alhaji A.R. Ibrahim	-	Officiating Minister
2.	Alhaji M.J. Dasuki	-	Panel Member
3.	Adisa Olayinka Amuda	-	son
4.	Adisa Abdulfatai	-	son
5.	Adisa Ibrahim	-	son
6.	Yusuf M. Gbalasa	-	Secretary

2.02 **OPENING PRAYER**:-

The meeting opened with prayer led by Alhaji M.J. Dasuki at 12:55pm.

3.01 **OPENING REMARKS**:-

The officiating minister Alhaji A.R. Ibrahim welcomed all the family members of the deceased to the preliminary meeting on the distribution of the estate and prayed for God's guidance at all times. Meanwhile he tendered the apology of the chairman of the panel and other 4 officiating ministers for their inability to attend the meeting adding that they were on other official assignment.

4.01 **MATTERS ARISING:-**

(a) **REQUEST LETTER**: A letter written and signed by Mr. AbdulFatai Adisa on behalf of the family was read for confirmation.

(b) **LIST OF HEIRS**: - The list of the legal heirs of the deceased was also confirmed according to their groups.

(c) **VALUATION REPORT**: - The valuation report of the properties of the deceased was confirmed though the panel directed the family to consult valuer for the breakdown of the properties into rooms.

5.01 ADJOURNMENT:-

The meeting adjourned till when the family would be able to submit the correct report.

6.01 **CLOSEING REMARKS:-**

The panel directed the family to come with more member of the family to witness the distribution process in the next meeting.

7.01 **CLOSING PRAYERS:-**

The meeting closed with prayer led by Alhaji A.R. Ibrahim at 1:15pm.

SGD	**SGD**
(**Alhaji A.R. Ibrahim)**	**(Yusuf M. Gbalasa)**
Officiating Ministe	Secretary
24/1/2011	24/1/2011

MINUTES OF THE 2ND MEETING ON THE DISTRIBUTION OF THE ESTATE OF THE LATE MALLAM AHMED ADISA HELD AT THE SHARIA COURT OF APPEAL, ILORIN ON THURSDAY 16TH JUNE, 2011.

1.00 ATTENDANCE:

1. Hon, Kadi A.A. Idris	Officiating Minister
2. Hon, Kadi M.O. A bdulkadir	Officiating Minister
3. Hon, Kadi A. A. Owolabi	Officiating Minister
4. Alhaji A. R. Ibrahim	Secretary.
5. Abdulfatai Adisa	Son.
6. Muhammed Bashir Adisa	Son.
7. Yusuf Adisa	Son.
8. Abdulrauf Adisa	Son.
9. Ibrahim Adisa	Son.
10. Yusuf M. Gbalasa	Rec. sec.
11. Alhaji M. J.Dasuki	Asst. Rec. Sec.

2.00 OPENING PRAYER

The meeting opened with prayer led by Alhaji M.J. Dasuki at 12:50 Noon.

OPENING REMARKS:

The officiating Minister, Hon. Kadi A.A. Idris welcomed all the family members of the deceased to the meeting and prayer for Gods guidance. Meanwhile, the minutes of the last meeting was read and adopted on motion moved by Muhammad Bashir Adisa and seconded by Abdulfatai Adisa respectively.

3.00 **MATTERS ARISING**

3.01 **DISTRIBUTION/ALLOTMENT**

The panel was set for the distribution exercise but could not continue as a result of few representations of the family members of the deceased. Therefore, the meeting was adjourned to Wednesday 22nd June, 20011.

4.00 **CLOSING PRAYER**:

The meeting closed with prayer led by Hon. Kadi M.O. Abdulkadir at 1.05 noon.

SGD	**SGD**
(HON. KADI A.A Idris)	(Yusuf . M. Gbalasa)
Chairman	Rec. Sec.
16/6/2011.	16/6/20011.

MINUTES OF THE 3RD MEETING ON THE DISTRIBUTION OF THE ESTATE OF THELATE MALLAM AHMED ADISA HEAD AT THE SHARIA COURT OF APPEAL, ILORIN ON WEDSDAY. 22ND JUNE 2011.

1.0 ATTENDANCE

1. Hon. Kadi A.A. Idris	Officiating matter
2. Hon. Kadi S. M. Abdulbaki	Officiating matter
3. Hon. Kadi M.O. Abdulkadir	Officiating matter
4. Abdulfatai Adisa	Son
5. Muhammed Bashir Adisa	Son
6. Ibrahim Adisa	Son
7. Yusuf Adisa	Son
8. Abdulrauf Adias	Son
9. Adisa Asiata	wife
10. Asmau Iyabo	Daughter
11. Alfa Musa Ahmed	Uncle
12. Alhaji M.J. Dasuki	Asst. Reg. Sec.
13 Yusuf M.Gbalasa	Reg. Sec.

2.0 OPENING PRAYER

The meeting opened with prayer led by Hon. Kadi M.O. AbdulKadir at 2.30 noon.

2.1 OPENING REMARKS

The officiating Minister, Hon, Kadi A. A. Idris welcomed all the Family members of the deceased to the meeting and prayed for God's guidance at all times.

DISTRUBUTION OF THE ESTATE OF THE LATE MALLAM AHMED ADISA

REAL ESTATE DISTRIBUTION

WORKING PAPER 'A'

LIST IF HEIRS:

GROUP 'A'

1.	Mrs. Habibat	Divorced wife
2.	Abdulfatai Adisa	Son
3.	Asmau Adisa	Daughter.

GROUP 'B'

1.	Mrs Belawu	Divorced wife
2.	Bashir Oloruntoyin	Son.

GROUP 'C'

1.	Mrs. Adisa Ashiata	Wife
2.	Ibrahim Adisa	Son
3.	Amuda Adisa	Son
4.	Abdulrauf Adisa	Son

WORKING PAPER 'B'

LIST OF ITEMS OF THE ESTATE AS LISTED IN THE VALUATION REPORT

PROPERTY: is a storey building consist 12 no. rooms (6 no rooms on each floor) located along Idi – Ape Street, Baruba Area, Ilorin.

(a) Ground Floor = 6 no. rooms valued at 280.000 each

Total = 1,680.000.00

(b) First Floor = 1 no. room valued at 326,000.00
5 no. rooms valued at 290.000.00
Total = **1,450.000.00**

Property 2: Is a storey building consist 4 no, Shops, 1 no big room at the ground floor while the first floor comprise 3 no. Rooms and 2 no. shops as follows:-

(a) Ground Floor Shop 1 = 493, 820. 00
Shops 2 = 555, 090. 00
Shop 3 = 555, 090. 00
Shop 4 = 436, 000. 00
Room = 300. 000. 00

TOTAL N 2, 340.000.00

First Floor:

Shop 1 = 390, 000. 00
Shop 2 = 390, 000. 00
Room 3 = 190, 0 00. 00
Room 2 = 200, 000 00
Room 3 = 330, 000. 00
N 1, 5000. 000. 00

GRAND TOTAL = N 7, 296. 000 .00

WORKING PAPER ("C")

FRACTIONAL SHARES OF REAL DISTRIBUTION

TOTAL Estate = ₦7, 296.000.00

1/8 of 7, 296,000.00 = 912,000.00 for the wife

Balance = 6, 384.000 for 5 Sons and 1 Daughter

5 Sons	=	10 Daughters
1 Daughter	=	1
		11 **working figure**

i.e. each Daughter will have 580,364.00 worth of the estate

while each Son will have twice 1,160, 728.00 worth of the estate.

S U M M A R Y

1. Wife = 912,000.00 x 1 = 912,000.00
2. Son =1, 160, 728.00 x 5 = 5, 803,640
3. Daughter = 580, 364.00 x1 = 580,363.00

Grand Total = ₦7, 296,000.00

WORKING PAPER "D "

GROUP SHARES OF REAL ESTATE DISTRIBUTION

	GROUP "A"		**ENTITLEMENT**	
1.	AbdulFatai	Adisa	Son	1,160,728.00
2.	Asmau	Adisa	Daughter	580,364.00

TOTAL = ₦1,741,092.00

GROUP "B"

1. Bashir Olohuntoyin Adisa Son 1,160,728.00

GROUP "C"

1.	Mrs. Ashiata Adisa	Wife	912,000.00
2.	Ibrahim Adisa	Son	1,160,728.00
3.	Amuda Adisa	Son	1,160,728.00
4.	Abdul Rauf Adisa	Son	1,160,728.00

TOTAL = ₦4, 394,184.00

GROUP SUMMARY

1. Group "A" = 1,741,092.00
2. Group "B" = 1,160,728.00
3. Group "C" = 4,394,184.00

GRAND TOTAL = N7, 296,000.00

PHYSICAL SHARING OF REAL ESTATE DISTRIBUTION

Group 'A' **ENTITLEMENT**	**Value**
Asmau Adisa (Daughter) (**580, 364 .00**) 1. **Property 2 :** located at central mosque Idi-Ape Area, Ilorin 2. Ground floor shops no .2.	555,090. 00
Credit Balance	25, 274.00

Abdul Fatai Adisa (Son) (**1, 160, 728. 00**) **Property 1:** located along Idi-Ape Street, Baruba Area, Ilorin 1no. room first floor 1no. 1no. room at the ground floor	 290, 000. 00 280, 000. 00
Property 2 ; located at central mosque Idi- Ape Area, Ilorin. Ground floor shop no.4	436, 000. 00
Total Received	**6. 000 .00**
Credit Balance	**154, 728.00**
Group "B"	
Bashir Oloruntoyin Adisa (Son) (**1, 160, 728.00**) **Property 1:** located along Idi –Ape Street,Baruba Area, Ilorin No. 1 room at the ground floor. 1 no room at the first floor. **Property 2:** Located at central mosque. Idi-Ape Area, Ilorin .First floor1 no. room no 1 **109, 000.00** 1no shop 2 390 000.00	 280, 000. 00 290, 000. 00
Total Received	1, 150. 000.00
Credit Balance	10, 728. 00
GROUP "C" **ENTITILEMENT** Asiata Adisa (wife) (**N912, 000. 00)** **Property 2:** located at central mosque Idi- Ape Area	 555, 590. 00

Ilorin. Ground Floor shop no.3 1no room	300. 000. 00
Total Received	855, 090. 00
Credit Balance	56, 910. 00

Ibrahim Adisa (**1, 160, 728. 00**)	
Property 1:- located at Idi- Ape Street Babura Area, Ilorin Ground Floor1no. room First floor 1no. room	280, 000. 00 290, 000. 00
Property 2:- located at central mosque Idi-Ape Area, Ilorin. Ground Floor shop no 1 first floor 1no. rooms1	493, 820. 00 200, 000. 00
TOTAL Received	1, 263, 820. 00
Debit Balance	103,092. 00
Amuda Adisa	
Property 2:- located at central mosque Idi- Ape Area, Ilorin first floor 1no room 3 Shop no1	330, 000. 00 390, 000 . 00
Property 1:- located at Idi-Ape Street Baruba Area, Ilorin. Ground floor 1no. room First floor 1no room	280, 000.00 390, 000.00
Total Received	1, 290. 000.00

Debit Balance	129, 272.00
AbdulRauf Adisa (**1, 160. 728.00**)	
Property 1:- located at Idi-Ape street Baruba Area, Ilorin. Ground floor 2no. rooms First floor 1 no room another 1 no room.Valued at	 560, 000.00 326, 000.00 290, 000.00
Total Received	1, 176, 000.00
Debit Balance	15, 272.00

SUMMARY/ BALANCE SHEET

S/N	NAME	ENTITLEMENT	TOTAL RECEIVED	CREDIT BALANCE	DEBIT BALANCE
1.	**Group 'A'** AbdulFatai Adisa (son)	1, 160, 728.00	1, 006, 000	154, 728.00	-
2.	Asmau Adisa (Daughter)	580, 364.000	555, 090.00	25,274.00	-
3	**Group 'B'** Bashir O. Adisa (son)	1, 160, 728.00	1, 150,000	10, 728.00	-
1.	**Group 'C'** Asiata Adisa (wife)	912, 000,00	855, 090.00	56, 910.00	-
2.	**Ibrahim Adisa**	1, 160,	1, 263,820.00	-	103,092.00

	(son)	728.00			
3.	Yusuf Amuda Adisa (son)	1, 160, 728.00	1, 290,000.00	-	129,272.00
4.	AbdulRauf Adisa (son)	1,160, 728,00	1,176, 000.00	-	15, 272.00
	TOTAL	7, 296,000	7, 296,000	247, 640	247, 636

CLOSING REMARKS

The panel admonished the heirs to see themselves as one and continue to pray for the repose of the soul of their late father and husband.

APPRECIATION

Alfa Musa Ahmed uncle of the deceased thanked the panel for job well done over the distribution of the estate of the late Mallam Ahmed Adisa and prayed for God's protection and guidance for them.

CLOSING PRAYER:

The meeting closed with prayer led by Alhaji M.J Dasuki at 2.00 p.m .

SGD
(Hon. Kadi A.A.Idris)
Officiating Minister
22/6/2011

SGD
Yusuf M. Gbalasa
Secretary
22/6/2011

United Bank for Africa,
2, Ilofa Road,
Ilorin, Kwara State.
29th December, 2010.

The Honourable Grand Kadi,
Shariah Court of Appeal,
Ilorin, Kwara State.

Dear Sir,

ASSISTANCE TO DISTRIBUTE THE ESTATE OF
ALHAJI JMOH AMBALI BALE

With due respect, I AbdulSalam Olarewaju Bale with mandate (as son) of the entire family of Late Alhaji Jimoh Ambali Bale (as evidenced in attached death certificate) wish to beg your Lordship for intervention in the retrieval and distribution of our Late Father's funds from the Banks as well as our Father's Shares from the Registrars.

Before his death, Alhaji Jimoh Ambali Bale worked with Central Bank of Nigeria in different part of Nigeria hence saving accounts spread around.

We pray for your Lordship's quick action but confident based on past case we have evidenced you handled successfully.

Thank you

Yours faithfully,

SGD
AbdulSalam Olarewaju Bale
(For the family) - 08035765679

The list of Banks

- Bale Jimoh Ambali
  Union Bank, Challenge Branch, Ilorin – A/NO 5241096604
- Bale Jimoh Ambali
  Union Bank, Challenge Branch, Ilorin - A/No. 42673481
- Bale Jimoh Ambali (Major)
  Union Bank, Challenge Branch, Ilorin - A/No. 3161010025905
- Share Investment
  Amao Consultant, Ilorin, Kwara State, Opp. Lara Bookshop, Tai Road, Ilorin
  Alhaji Bale Jimoh Ambali
- Jimoh Ambali Bale (Savings)
  Stanbic IBTC Bank PLC, Unity Road, Ilorin A/No. 7300328888
- Jimoh Ambali Bale (fixed)

  Stabic IBTC Bank Plc, Unity Road, Ilorin A/No. 7100066196
- Jimoh Ambali Bale
  Zenith Bank Plc, Unity Road, Ilorin
  S/No. 4014139643
  Fixed A/No. 2074116687
- Jimoh Ambali Bale (Savings)
  Intercontinental Bank Plc, Unity Road, Ilorin.

  A/No. 0029E33758215
  A/NO. 002911023455
  Fixed A/No. 0029301000000234

MINUTES OF THE PRELIMINARY MEETING ON THE DISTRIBUTION OF THE ESTATE OF THE LATE ALHAJI JIMOH AMBALI BALE HEAD AT THE SHARIA COURT OF APPEAL, ILORIN ON TUESDAY 5TH APRIL, 2011

01. **ATTENDANCE**

1. Hon. Kadi S.O. Muhammad	-	Chairman
2. Hon. Kadi A.A. Owolabi	-	Officiating Minister
3. Alhaji A.R. Ibrahim	-	Panel Member
4. Alhaji Issa Bale	-	Brother
5. Alhaja Ajarat Oba	-	Sister
6. AbdulSalam O. Bale	-	Son
7. Tajudeem A. Bale	-	Son
8. AbduLateef K. Bale	-	Son
9. Bolakale Y. Bale	-	Son
10. Mrs. Ayodele Lawal	-	Daughter
11. Sikirat Bale	-	Daughter
12. Alhaji M.J. Dasuki	-	Panel Member
13. Yusuf M. Gbalasa	-	Secretary

2.01. **OPENING PRAYER**:

The meeting opened with prayer led by the Hon. Kadi A.A. Owolabi at 12.30 noon.

2.01. OPENING REMARKS:

The Chairman of the Panel, Hon. Kadi S.O. Muhammad welcomed all the family members of the deceased to the preliminary

meeting on the distribution of the estate of the deceased and prayed for God's guidance at all times.

Meanwhile, he tendered the apology of the 3 Officiating Ministers for their inability to attend the meeting.

4.01. MATTERS ARISING:

(a) Letter written and signed by AbdulSalam Olarewaju Bale on behalf of the family was read for confirmation and so confirmed by the family members.

The list of heirs and properties was also confirmed.

(b) Cash: The draft cheque copies received through various banks with total amount of five million three seventy two thousand three fifty five naira two kobo only (N5, 372,355.2) was also confirmed at the meeting.

(c) **VALUATION REPORT**:

The panel directed the family to re-value the said plots of land at Ballah in Asa Local Government Area of Kwara State and each of the houses room by room.

5.01 **CLOSING REMARKS**:

The meeting adjourned till when the family would be able submit a comprehensive valuation report.

6.01 **CLOSING PRAYER**:

The meeting closed with prayer led by Alhaji Issa Bale, brother of the deceased at 1.30p.m.

(SGD)	**(SGD)**
(HON. KADI S.O. MUHAMMAD)	**(YUSUF M.GBALASA)**
Chairman	**Recording Secretary**

MINUTES OF THE 2ND MEETING ON THE DISTRIBUTION OF THE ESTATE OF THE LATE ALHAJI JIMOH AMBALI BALE HELD AT THE SHARIAH COURT OF APPEAL, ILORIN ON WEDNESDAY, 27TH APRIL, 2011.

01 **ATTENDANCE**

1.	Hon. Kadi S.O. Muhammad	-	Chairman
2.	Hon. Kadi A.A. Idris	-	Officiating Minister
3.	Hon. Kadi A.A. Owolabi	-	Officiating Minister
4.	Alhaji A.R. Ibrahim	-	Secretary
5.	Dr. Abdullahi Sa'adu	-	Friend of the deceased
6.	Mr. AbdulSalam O. Bale	-	Son
7.	Tajudeen A. Bale	-	Son
8.	AbdulLateef k. Bale	-	Son
9.	Bolakale Y. Bale	-	Son
10.	Alhaja Adamoh Bale	-	Wife
11.	Mrs. Ayodele Lawal	-	Daughter
12.	Sikirat Bale	-	Daughter
13.	Alhaji Issa Bale	-	Brother
14.	Iyabo AbdulMaliki	-	Daughter
15.	Alhaja Ajarat Oba	-	Sister
16.	Yusuf M. Gbalasa	-	Recording Secretary

2.00 **OPENING PRAYER**

The meeting opened with prayer led by Hon. Kadi A.A. Owolabi at 11.20 am

2.01 **OPENING REMARKS**:

The Chairman of the panel welcomed all the family member of the deceased to the 2nd meeting on the distribution of the estate and prayed for God's guidance.

Meanwhile, he tendered the apology of the two officiating Ministers for their inability to attend the meeting.

2.0 **LAST MINUTES:**

The minutes of the last meeting was read and unanimously adopted on motion moved by AbdulSalam O. Bale and seconded by Mrs. Ayodele Lawal respectively.

2.00 **MATTERS ARISING**:

CASH AND DRAFT: A cash of two hundred and six thousand four hundred and sixty five naira only (N206, 465.00) and draft cheque of Five Million one hundred and eleven thousand, eight hundred and ninety naira two kobo (N5, 111,890.2) was distributed to the heirs accordingly.

2. 01. **VALUATION REPORT:**

Copies of the corrected valuation report as directed by the panel at the last meeting was brought and submitted by the family.

3.03 **DEBT:**

No record of debt either for or against the deceased.

4.00 **CLOSING REMARKS**:

Dr. Abdullahi Sa'adu (friend of the deceased) thanked the panel on behalf of the family for a successful distribution of the cash estate

of the deceased. He prayed for long life with good health for the panel. On his part, Hon. Kadi A.A. Idris counsel the family as usual on the need to be one and continue to pray for the repose of the soul of their late husband and father.

4.01 **CLOSING PRAYER**:

The meeting closed with prayer led by Hon. Kadi A.A. Idris at 1.05 pm.

(SGD)	**(SGD)**
(HON. KADI S.O. MUHAMMAD)	**(YUSUF M.GBALASA)**
Chairman	**Recording Secretary**
27/04/2011	**27/04/2011**

DISTRIBUTION OF THE ESTATE OF THE LATE ALHAJI BALE JIMOH AMBALI, 28TH APRIL, 2011

CASH DISTRIBUTION

WORKING PAPER 'A'

LIST OF HEIRS:-

GROUP 'A'

1.	Alhaja Adama Asabi Bale	(Wife)
2.	Rafat Ayodele Bale	(Daughter)
3.	Belawu Iyabo Bale	(Daughter)
4.	Sikirat Oluwakemi Bale	(Daughter)
5.	AbdulSalam Olarewaju Bale	(Son)
6.	Yakub Bolakale Bale	(Son)
7.	Tajudeen Adebayo Bale	(Son)
8.	AbdulLateef Kolapo Bale	(Son)

WORKING PAPER B

AVALAIABLE CASH FOR DISTRIBUTION

An amount of five million three hundred and seventy two thousand three hundred and fifty five Naira, twenty three kobo only (N5, 372,355.25) was received via the deceased bank accounts in Ilorin.

WORKING PAPER C

FRACTIONAL SHARES OF CASH DISTRIBUTION

Total cash = N5, 372,355.23

1/8 of N5, 372,355.23 = N671,544.403 for the wife

Balance of 4,700,810.826 for 4 sons and 3 daughters.

4 sons = 8

3 daughters = 3

11 working figure

i.e. each daughter will have 427,346.438 worth of the cash

which each son will have 854,692.877 worth of the cash.

WORKING PAPER 'D'

GROUPS SHARES OF CASH DISTRIBUTION

	NAME	ENTITLEMENT	SIGN
1.	Alhaja Adama A. Bale (Wife)	671,544.403	
2.	AbdulSalam O. Bale (Son)	854,692.877	
3.	Yakubu B Bale (Son)	854,692.877	
4.	Tajudeen A Bale (Son)	854,692.877	
5.	AbdulLateef K. Bale (son)	854,692.877	
6.	Rafat A Bale (Daughter)	427,346.438	
7.	Belawu I. Bale (Daughter)	427,346.438	
8.	Sikirat O. Bale (Daughter)	427,346.438	
	GRAND TOTAL	N5,372,355.22	

WORKING PAPER 'E'

SUMAMRY

1.	Wife	=	671,544.403	X 1	=	N671,544.403
2.	Son	=	854,692.877 x 4		=	3,418,771.509
3.	Daughter	=	427,346.438 x 3 =			1,282,039.314
	GRAND TOTAL					**5,372,355.22**

MINUTES OF THE 3RD MEETING ON THE DISTRIBUTION OF THE ESTATE OF THE LATE ALHAJI JIMOH AMBALI BALE HELD AT THE SHARIA COURT OF APPEAL, ILORIN ON TUESDAY, 2ND JUNE, 2011.

01. **ATTENDANCE**

1.	Hon Kadi A.A. Idris	-	Officiating Minister
2.	Hon. Kadi S.M. AbdulBaki	-	Officiating Minister
3.	Hon. Kadi A.A. Owolabi	-	Officiating Minister
4.	Alhaji A.R. Ibrahim	-	Secretary
5.	Yakubu Bolakale Bale	-	Son
6.	AbdulLateef K. Bale	-	Son
7.	Tajudeen A. Bale	-	Daughter
8.	Sikirat Bale (Mrs)	-	Daughter
9.	Behohu Bale (Mrs)	-	Daughter
10.	Ayodele Lawal (Mrs)	-	Daughter
11.	Alhaji Issa Bale	-	Brother
12.	Alhaja Adamo Bale	-	Wife
13.	Yusuf M. Gbalasa	-	Rec. Secretary
14.	Alhaji M.J. Dasuki	-	Asst. Reg. Sec.

2.00 **OPENING PRAYER**:

The meeting opened with prayer led by Hon. Kadi A.A. Owolabi at 2.15noon

2.01 **OPENING REMARKS:**

The Officiating Minister, Hon. Kadi A.A. Idris welcomed all the family members of the deceased to the meeting and prayed for God's

guidance at all times. Meanwhile, he tendered the apology of Hon. Kadi M.O. AbdulKadir for his inability to attend the meeting.

2.02 **LAST MINUTES**

The minutes of the last meeting was read and unanimously adopted by consensus.

3.0 MATTERS ARISING

DISTRIBUTION / ALLOTMENT

Copies of the working papers were distributed to all the family members present at the meeting and details was read by Hon. Kadi A.A. Idris for full clarification of cash and real estate distribution were read as follows:-

DISTRIBUTION OF THE ESTATE OF THE LATE ALHAJI JIMOH AMBALI BALE, REAL ESTATE DISTRIBUTION WORKING PAPER 'A'

LIST OF HEIRS:

Alhaja Adamoh Bale	Wife
AbdulSalam O. Bale	Son
Yakub Bolakale Bale	Son
Tajudeen Adebayo Bale	Son
Abdulattef Kolapo Bale	Son
Rafat Ayodele Bale	Daughter
Belawu Iyabo Bale	Daughter
Sikirat Oluwakemi Bale	Daughter

WORKING PAPER 'B'

LIST OF ITEMS OF THE ESTATE AS LISTED IN THE VALUATION REPORT HOUSE

Property 1: A storey building of 4 No. flat with 5 no. bedroom each at Agbo Oba Road, Ilorin valued at 2,000,000.00 each total= N8,000,000.00

Property 2: A storey building of 4 no flat located at Olorunsogo (Agunbelowo Area), Ilorin Consists the following:-

(a) 2 No flat of 3 bedroom each at 1,400,000.00
Total = 2,800,000.00

(b) 2 No flat of 2 bedroom each at 1,100,000.00
Total **2,200,000.00**

Property 3: A bungalow consist 2 no. flat of 3 bedroom each valued at 1, 000, 00.00
Each total l= 2,000,000.00
1 No self contained valued at 500,000.00
2 No. Boys Quarters and 1 No. room self contained
Valued at 750,000.00
Each total = 1,500,000.00 = Located at Tanke Area, Ilorin,

Total 17,000,000

LAND

Property 4: 7 and ¼ plots of land located at Ballah Town in Asa Local Government Area, valued at N40,000.00 each and ¼ plot at 10,000.00 =

Total = N290, 000.00

GRAND TOTAL N17,290,000.00

WORKING PAPER 'C'
FRACTIONAL SHARES OF REAL DISTRIBUTION

TOTAL ESTATE = N17, 290,000.00
1/8 of N17, 290,000.00 = N2,161,250.00 for the wife
Balance = N15, 128,750.00 for 4 Sons and 3 Daughters

4 sons	=	8
3 Daughters	=	3
Total	=	11 working figure

i.e. each Daughter will have N1,375,341.00 worth of the real estate
While each Son will have twice N2,750,682.00 worth of the estate.

SUMMARY

1.	Wife	=	N2,161,250.00 x 1	=	N2,161,250.00
2.	Son	=	N2,750,682.00 x 4	=	N11,002,728.00
3.	Daughter	=	N1,375,341.00 x 3	=	N4,126,023.00
			Total:	=	**N17, 290,000.00**

WORKING PAPER 'D'
INDIVIDUAL SHARES OF REAL ESTATE DISTRIBUTION

	NAME	ENTITLEMENT
1.	Alhaja Adama A. Bale (Wife)	2,161,250.00
2.	AbdulSalam O. Bale (Son)	2,750,682.00
3.	Yakubu B Bale (Son)	2,750,682.00
4.	Tajudeen A Bale (Son)	2,750,682.00
5.	AbdulLateef K. Bale (son)	2,750,682.00
6.	Rafat A Bale (Daughter)	1,375,341.00
7.	Belawu I. Bale (Daughter)	1,375,341.00
8.	Sikirat O. Bale (Daughter)	1,375,341.00
	GRAND TOTAL	**N17,290,000.00**

PHYSICAL SHARING OF REAL ESTATE DISTRIBUTION

	NAME	ENTITLEMENT
	Alhaja Adamo Bale (Wife)	**2,161,250.00**
1	1 No Flat Agbo Oba Area, Ilorin valued at	2,000,000.00
2	2 No. Plots of land at Ballah in Asa Local Government Area Kwara State valued at	80,000.00

	Total Received	2,080,000.00
	Credit Balance	31,250.00
=	==========	==========
	AbdulSalam O. Bale (Son)	**2,750,682.00**
1	1 No. flat at Agbo-Oba Area, Ilorin valued at	2,000,000.00
2	2 Nos. plots of land at Ballah in Asa Local Govt Area Kwara State. Valued at	80,000.00
	Total Received	2,080,000.00
	Credit Balance	670,682.00
=	==========	==========
	Yakubu Bola Bale (Son)	**2,750,682.00**
1	1 No. flat at Tanke Area, Ilorin	1,000,000.00
2	1 No. flat at Olorunshogo Area, Ilorin	1,400,000.00
3	2 Nos. plots of land at Ballah in Asa Local Govt. Area, Ilorin	80,000.00
	Total Received	2,400,000.00
	Credit Balance	270,682.00

=	==========	==========
	Tajudeen Bale (Son)	**2,750,682.00**
1	1 No. flat at Agbo-Oba Area, Ilorin	2,000,000.00
2	1 No. Flat at Olorunshogo Area, Ilorin	1,100,000.00
	Total Received	3,100,000.00
	Debit Balance	349,318.00
=	==========	==========
	AbdulLateef Bale (Son)	**2,750,682.00**
1	1 No. Flat at Agbo-Oba Area, Ilorin	2,000,000.00
2	1 No. flat at Olorunshogo Area, Ilorin	1,100,000.00
	Total Received	3,100,000.00
	Debit Balance	349,318.00
=	==========	==========
	Rafat A. Bale (Daughter)	**1,375,341.00**
1	1 No. flat at Tanke Area, Ilorin	1,000,000.00
2	2 Nos. self contained	500,000.00

	Total Received	1,500,000.00
	Debit Balance	124,659.00
=	==========	==========
	Belawu Iyabo Bale (Daughter)	**1,375,341.00**
1	1 No. flat at Olorunshogo Area, Ilorin and 1 No. room.	1,400,000.00
	Total Received	1,400,000.00
	Debit Balance	24,659.00
=	==========	==========
	Sikirat Bale (Daughter)	1,375,341.00
	2 No. Boys Quarter and 1 No. room	1,500,000.00
	Debit Balance	124,659.00

DISTRIBUTION OF THE ESTATE OF THE LATE
ALHAJI JIMOH AMBALI BALE
PERSONAL EFFECTS DISTRIBUTION

WORKING PAPER 'A'

LIST OF HEIRS:

1. Alhaja Adama A. Bale (Wife)
2. AbdulSalam O. Bale (Son)
3. Yakubu B Bale (Son)
4. Tajudeen A Bale (Son)
5. AbdulLateef K. Bale (son)
6. Rafat A Bale (Daughter)
7. Belawu I. Bale (Daughter)
8. Sikirat O. Bale (Daughter)

WORKING PAPER 'B'
LIST OF ITEMS OF THE PERSONAL EFFECTS AS LISTED IN THE VALUATION REPORT:

WORKING PAPER 'C'
FRACTIONAL SHARES OF PERSONAL EFFECTS DISTRIBUTION.

Total Estate =N1, 223,420=

1/8 of N1, 23,420.00 = N152,927.5 For The Wife

Balance =N1, 070,492.5 For 4 Sons And 3 Daughters

SUMMARY

4 sons	=	8
3 Daughters	=	3
Total	=	11 working figure

i.e. each Daughter will have N97,317.5 worth of the personal effects . While each Son will have twice N194, 635.00 worth of the personal effects

SUMMARY

4.	Wife	=	N152,927.5	x 1	=	N152,927.5
5.	Son	=	N194,675.00	x 4	=	N778,540.00
6.	Daughter	=	N97,317.5	x 3	=	N291,952.5
			Total:		=	**N1,223.420**

INDIVIDUAL SHARES OF PERSONAL EFFECTS DISTRIBUTION

	NAME	ENTITLEMENT	
1.	Alhaja Adama A. Bale (Wife)	152,927.5	SGD
2.	AbdulSalam O. Bale (Son)	194,635.00	SGD
3.	Yakubu B Bale (Son)	194,635.00	SGD
4.	Tajudeen A Bale (Son)	194,635.00	SGD
5.	AbdulLateef K. Bale (son)	194,635.00	SGD
6.	Rafat A Bale (Daughter)	97,317.5	SGD
7.	Belawu I. Bale (Daughter)	97,317.5	SGD
8.	Sikirat O. Bale (Daughter)	97,317.5	SGD
	GRAND TOTAL	**N1,223,420.00**	

DISTRIBUTION / ALLOTMENT
ALHAJA ADAMOH A. BALE

WIFE ENTITLEMENT
CLOTHING ITEMS N152, 927.5

1.	Unclassified	10 no. at (100.00 Each)	1,000.00
2.	New T-Shirt and Trouser	5 No. at (500 each)	2,500.00
3.	Jalamiya	3 No. at (300 each)	900.00
4.	Old Caps	10 Nos. at (300 each)	500.00
5.	Bed Sheet Old	4 Nos. at (200 each)	800.00
6.	Brief cases Old	5 Nos. at (800 each)	4,000.00
7.	Praying mat	1 No at N200.00	200.00
8.	Rug mat	1 No at 1000	1000.00
9	Bed Sheet	**1 No at 1000.00**	1000.00
10	Head Nest Chair	**1 No at 500**	500.00
11	Center rug	**1 No at 15,000.00**	15,000.00
12	Towel	**1 No at 400**	400.00

ELECTRICAL AND ELETRONIC APPLIANCES

1.	Fan Standing	1 No at 1000	1,000.00
2.	Bathroom scale	1 No at 1000	1,000.00
3.	Vital 1 Scan plus (blood pressure)	1 No 5000	5,000.00
4.	Organizer	1 no	5,000.00
5.	Nokia Phone	1 no	20,000.00
6.	Television flat screen	1 no	20,000.00
7.	Loader Deck Radio		5,000.00
8.	Stabilizer big/small	2 no	10,000.00
9	Refrigerator	**1 no**	500.00
10	Stereo plates video cassette (VHS)	**10 no**	800.00
11	Tape cassette	**8 no**	500.00
12	12 glass cups 3 packs	**3 packs**	1,500.00
13	Generator (5 WA)	**1 no**	50
	Total	**=**	152,173.5
	Credit Balance	**=**	754

ABDULATEEF KOLAPO BALE

Son (1) Entitlement 194,635.00

1.	Complete Agbada clothes old	5 no at 500 each	2,500.00
2.	Complete Agbada clothes new	2 no at 1,500 each	3,000.00
3.	Trousers old	4 no at 100 each	400.00
4.	Unclassified	10 no at 100 each	1,000.00
5.	New –T-Shirt and Trouser	5 no 500 each	2,500.00
6.	Jalamiya	5 no at 300	1,500.00
7.	Buba and Trouser old	3 no 500 each	1,500.00
8.	Complete Agbada	1 no	800.00
9	Buba and Trousers old	**500**	2,500.00
10	Old Caps	**11 no at 50**	550.00
11	Bed Sheet	**4 no**	800.00
12	Packs of H-Kerchief	**15 at 50**	750.00
13	Window curtains complete set	**1 no**	23,000.00
14	Praying mats	**2 no**	800.00

15	Bed Sheet	**1 no**	300.00
16	Buba and Sokoto	**2 no**	1,000.00
17	Agbada	**1 no**	250.00
18	Peugeot 504 Car	**1 no**	100,000.00
19	Center rug	**1 no**	15,000.00
20	Belt	**2 no**	1,000.00
21	Shoes (Palm sandals)	**5 no at 200 each**	1,000.00
22	Undies, Handkerchief and Singlet	**A pack**	1,500.00
23	Curtain	**5 no**	1,000.00
24	Praying mat	**2 no**	400.00
25	Suit 7 Trousers	**7 no**	5,600.00
26	Fan Standing	**1 no**	1,000.00
27	Air Conditional slip (ac with Condenser	**1 no**	25,000.00
	TOTAL		194,650.00
	DEBIT BALANCE		15,00

ABDULSALAM O. BALE
Son (2) Entitlement 194,635.00

1.	Buba and Trouser (New)	10 no	10,000.00
2.	Big Size bed	1 no	7,000.00
3.	Complete Agbada clothes old	5 no	2,500.00
4.	Clinical bed	1 no	1,000.00
5.	Complete Agbada clothes new	2 no	3,000.00
6.	Single Buba and Trouser old	8 no	2,000.00
7.	Trousers (old)	4 no	400.00
8.	Glass stand	4 no	500.00
9	Unclassified	**6 no**	600.00
10	New T-Shirt and Trouser	**5 no**	2,500.00
11	Cupboard	**1 no**	3,500.00
12	Jalamiya	**5 no**	1,500.00
13	Buba and Trouser old	**4 no**	2,000.00
14	Complete Agbada	**1 no**	800.00
15	Complete Agbada new and old	**2 no**	1,000.00

16	Buba and Trouser old	**4 no**	2,000.00
17	Old caps	**10 no**	500
18	Bed sheet old	**6 no**	1,200.00
19	Suite and Trouser	**7 no**	5,600.00
20	Brief cases old	**5 no**	4,000.00
21	Praying mat	**2 no**	400.00
22	Curtain	**5 no**	1,000.00
23	Shoes palm sandals	**5 no**	1,000.00
24	T.V. Stand	**1 no**	4,000.00
25	Book / Journals / Articles	**2 no**	10,000.00
26	Table Tennis Bat	**1 no**	200.00
27	Table Tennis Balls	**2 no**	100.00
28	Tape cassettes	**20 no**	1,000.00
29	V.C.D. / DVD/Disk	**10 no**	1000.00
30	Flask	**2 no**	1,000.00
31	Screw Drivers Tools	**A set**	500.00
32	Walking stick	**1 no**	200.00

33	A pack of spoon	**1 no**	250.00
34	1 set of sitting room chair/stood	**1 no**	30,000.00
35	4 Relaxation chairs	**1 set**	14,000.00
36	3 Water Drums	**3 no**	1,200.00
37	Dining Table and chairs	**1 no**	8,000.00
38	Cup Shelf	**1 no**	1,500.00
39	Rug	**2 no**	10,000.00
	TOTAL	=	186,850.00
	CREDIT BALANCE	=	7,785.00

TAJUDEEN A BALE
SON (3) ENTITLEMENT

194,625.00

1	Benz C – CLASS	1 no	400,000.00
	Debit Balance		205,365.00

YAKUB B. BALE

SON (4)			**ENTITLEMENT**
1	Cash received		194,625.00
==	==========	======	==========

RAFAT AYO BALE

DAUGHTER (1) ENTITLEMENT 97,317.5

1.	Buba and Trouser	8 no	8,000.00
2.	Books / Journals / Articles	16 no	8,000.00
3.	New T. Shirt and Trouser	8 no	4,000.00
4.	Mattress	1 no	20,000.00
5.	Benz C. Glass	-	10,000.00
6.	Stretcher	1 no	2,000.00
7.	A set of sitting room chair and 4 stood (wooden)	1 no	20,000.00
8.	Office Table	1 no	1,500.00
9	Center Table Glass	**1 no**	15,000.00
10	Rug	**1 no**	5,000.00

11	3 row cupboard	**1 no**	2,500.00
12	Keg and plastic kettle and mopping stick	**1 no**	500.00
13	TOTAL	=	97,230.00
14	CREDIT BALANCE	=	87.5

BELAWU BALE

DAUGHTER (2) ENTITLEMENT 97,317.5

1.	Buba and Trouser new	2 no	2,000.00
2.	Complete Agbada clothes (old)	4 no	2,000.00
3.	Complete Agbada clothes (new)	2 no	3,000.00
4.	Single buba and trouser (old)	6 no	1,500.00
5.	Trouser old	8 no	800.00
6.	New T –Shirt and trouser	7 no	3,500.00
7.	Complete Agbada new and old	3 no	1,500.00
8.	Buba and Trousers old	4 no	2,000.00

9	Old Caps	**20 no**	1,000.00
10	Suite and Trousers	**20 no**	16,000.00
11	Brief cases old	**8 no**	6,400.00
12	Curtain	**2 no**	400.00
13	Shoes (palm sandals)	**2 no**	800.00
14	Wall clock	**2 no**	300.00
15	Electric Kettle	**3 no**	3,000.00
16	Kodak Instant camera	**1 no**	500.00
17	Scientific Calculator	**1 no**	500.00
18	Chinese phone	**1 no**	5,000.00
19	Rechargeable Lantern radio	**3 no**	2,400.00
20	Table and chair (reading)	**1 no**	1,500.00
21	Stereo plates	**3 no**	1,500.00
22	Fridge Thermo cool (2) Deep Freezer (1)	**1 no**	6,000.00
23	Metallic Hanger	**3 no**	1,000.00
24	Video Cassettes (VHS)	**20 no**	2,000.00
25	Shoe Rack		200.00

26	Tape Cassettes	**30 no**	1,500.00
27	VCD/DVD/|Disk	**15 no**	1,500.00
28	Breakable plates	**1 pack**	500.00
29	'17' Television	**1 no**	10,000.00
30	500 VA Stabilizer	**1 no**	1,000.00
31	Eye Gasses	**1no**	500.00
32	Pillow	**4 no**	1,000.00
33	Electronic Shelf	**1 no**	7,000.00
34	Bed + 2 Pillows	**1 no**	10,000.00
35	1 set of cutlasses	**1 no**	500.00
36	Tea cup sets and tray	**1 no**	400.00
37	Total	=	97,300.00
38	Credit Balance	=	17,00

SIKIRAT BALE

DAUGHTER (3)			**ENTITLEMENT**
97,317.5			
1.	Complete Agabada	2 no	1,600.00
2.	Old Caps	33 no	1,650.00
3.	New T-Shirt and trouser	4 no	2,000.00
4.	Suites and Trousers	14 nos	11,200.00
5.	Video Cassettes (VHS)	10 no	1,000.00
6.	Tape and cassettes	1 pack	500.00
7.	Breakable Plates	1 pack	500.00
8.	A pack of spoon	1 no	250.00
9	Tray (Stainless)	**1 no**	500.00
10	Computer (Desk Top)	**1 no**	18,000.00
11	Desk jet printer	**8 no**	5,000.00
12	1.5 KVA Stabilizer	**1 no**	4,000.00
13	Tape C.D. Cassette	**1 no**	6,000.00
14	T.V. Antenna receiver	**1 no**	1,500.00
15	Small Radio	**1 no**	300.00
16	Extension Box	**1 no**	100.00

17	Ceiling Fan	**2 no**	2,000.00
18	60 Watts bulbs	**4 no**	120.00
19	Wall clock	**1 no**	250.00
20	Refrigerator	**1 no**	13,000.00
21	Electric Kettle	**1 no**	1,000.00
	TOTAL	=	70,370.00
	CREDIT BALANCE	=	26,942.00

DISTRIBUTION OF THE ESTATE OF THE LATE ALHAJI JIMOH AMBALI BALE SHARES DISTRIBUTION

WORKING PAPER 'A'

LIST OF HEIRS:

1. Alhaja Adama A. Bale (Wife)
2. AbdulSalam O. Bale (Son)
3. Yakubu B Bale (Son)
4. Tajudeen A Bale (Son)
5. AbdulLateef K. Bale (son)
6. Rafat A Bale (Daughter)
7. Belawu I. Bale (Daughter)
8. Sikirat O. Bale (Daughter)

WORKING PAPER 'B'

LIST OF STOCKS AS LISTED IN THE VALUATION REPORT

WORKING PAPER 'C'

FRACTIONAL SHARES OF STOCKS DISTRIBUTION

Total stock = N1, 974,098.3

1/8 of N1, 974,098.3 = 246,762.287 for the wife

Balance = N1, 727,336.013 for 3 Sons and 3 Daughters

SUMMARY

4 Sons = 8

3 Daughters = 3

11 working figures

i.e. each Daughter will have N157,030.564 worth of the personal effects. While each Son will have twice N314, 061.093 worth of the effects.

SUMMARY

1. Wife = N246,762.287 x 1 = N246,762.287
2. Son = N314,061.093 x 4 = N1,256,244.373
3. Daughter= N157,030.546 x 3 = N471,091.638

Total = N1, 974,098.3

WORKING PAPER 'D'

INDIVIDUAL SHARES OF STOCKS DISTRIBUTION

GROUP		**ENTITLEMENT**	
1.	Alhaja Adama A. Bale (Wife)	246,762.287	sgd
2.	AbdulSalam O. Bale (Son)	314,061.093	sgd
3.	Yakubu B Bale (Son)	314,061.093	sgd
4.	Tajudeen A Bale (Son)	314,061.093	sgd
5.	AbdulLateef K. Bale (son)	314,061.093	sgd
6.	Rafat A Bale (Daughter)	157,030.546	sgd
7.	Belawu I. Bale (Daughter)	157,030.546	sgd
8.	Sikirat O. Bale (Daughter)	157,030.546	sgd
	GRAND TOTAL	**1,974,098.3**	

DISTRIBUTION / ALLOTMENT

ALHAJA ADAMOH A. BALE (WIFE		**ENTITLEMENT**
		N246,762.287
1	Union Bank Plc	124,083.3
2	Ashaka Cement	147,374.5
	TOTAL	**271,457.8**
	DEBIT BALANCE	24,695.51

SON 1

ABDULSALAM O. BALE		ENTITLTEMNT **N314,061.093**
1	Cadbury Plc	137,522.8
2	Coin Oil Plc	36,874.24
3	Eko Corp Plc	30,240.45
4	Dangote Flour Mills	12,000.00
5	Cement Company of Nig.	17,600.00
6	Fidelity Bank	4,837.36
7	First Inland Bank	3,123.00
8	Japan/Oil and Marine Service	4,950.00
9	Nestle foods Plc	8,040.00
10	Nig Bags Men Com.	2,750.00
11	Transnational Corporation	4,000.00
12	Triple Gee and Co. Plc	13,104.00
13	African Petroleum Plc	41,876.00
	TOTAL	**316,917.85**
	DEBIT BALANCE	2,856.75

SON 2		**ENTITLEMENT**
YAKUB B. BALE		**N314,061.093**
1	Guinness Nig. Plc	314,061.093
	Total	**314,061.093**
===	==========	==========

SON 3		**ENTITLEMENT**
ABDULLATEEF BALE		**N314,061.093**
1	Guinness Nig. Plc (Share)	314,061.093
	Total	**314,061.093**

SON 4		**ENTITLEMENT**
TAJUDEEN BALE		**N314, 061.093**
1	Guinness Nig. Plc (Share)	121,877.814
2	Oando Plc	131,987.1
3	First Bank Plc	37,693.98
4	Access Bank	20,691.00
5	Dangote Sugar Plc	10,060.00
6	Afri Bank Plc	7,919.61
	Credit Balance	312,229.505

DAUGHTER 1		**ENTITLEMENT**
SIKIRAT O. BALE		**N157,030.546**
1	Total Finael Nig. Plc	442,830.96
2	(Share)	157,030.54

DAUGHTER 2		**ENTITLEMENTS**
BELAHU I. BALE		**N157,030.546**
1	Total Finael Nig. Plc	442,830.96
2	(Share)	157,030.54

DAUGHTER 3		**ENTITLEMENT**
RAFAT A. BALE		**N157,030.546**
1	Total Finael Nig. Plc	442,830.96
2	(Share)	128,769.86
3	Platinum Bank Plc	1,140.00
4	Debit Balance of Wife	24,695.51
5	Debit Balance of Son	2,425.75
		157,030.54

CLOSING REMARKS:

The panel admonished the heirs to see themselves as one and continue to pray for the repose of the soul of their late husband and father.

APPRECIATION:

Alhaji Issa Bale brother of the deceased on behalf of the whole family thanked the panel on the successful completion of the assignment on the distribution of the estate of his deceased brother and prayed for God protection and guidance for them.

CLOSING PRAYER:

The meeting closed with prayer led by Hon. Kadi S.M. AbdulBaki at 3.30 pm.

SGD
Hon. Kadi A.A. Idris
Officiating Minister
2/6/2011

SGD
Yusuf M. Gbalasa
Secretary
2/6/2011

273, Alore Road,
Ilorin,
Kwara State,
18th April, 2011

The Honourable Grand Kadi,
Sharia Court of Appeal,
Ilorin,
Kwara State.

Dear Sir,

ASSISTANT TO DISTRIBUTE THE ESTATE OF THE LATE ALHAJI SIDIQUE ALABI SALMAN

With due respect, I **SALMAN ABUBAKA SIDIQUE** with Mandate (as Son) of the entire family of **ALHAJI SIDIQUE ALABI SALMAN** wish to beg your Lordship for intervention in the retrieval and distribution of our Late Father's funds from the Banks as well as our Father's Estate.

Before his death, Alhaji Sidique Alabi Salman retired in the Ministry of Finance, Kwara State.

We pray for your Lordship's quick action but confident based on past case we have evidenced you handled successfully.

Thank you.

Yours faithfully,
Sgd
SALMAN ABUBAKAR SIQIQUE
(for the family)
08062386698

1. **The List of Banks**

-A Alhaji Sidique Alabi Salman
First Bank of Nig. Plc, Account No. 1903010007400 (Savings).

-B Alhaji Sidique Alabi Salman
Zenith Bank Plc (Surulere Branch) Savings A/No. – 4215105527

-C Alhaji Sidique Alabi Salman
Zenith Bank Plc – Fixed A/No. 2275100585

2. **PERSONAL PROPERTIES**

- One Mazda Saloon Car 626 -Engine No. FE169368
Chassis No. JM2GC124201823179
Registration No. AJ371 LRN

-6 Bedroom Flat located at Abata sunkere area, Ilorin.
-One Storey Building. Each Floor with 2 Bedroom Flat
-8 Rooms Family House at NO. 273, Alimi Road, Olounoje Compound, Alore, Ilorin.
-One Shop Opposite Maraba Motor Park, Maraba, Ilorin
-One 32 Inches Flat Screen TV (Sony Product)
-One Toshiba TV 20 Inches
-One Ox Standing Fan.
-One Medium Size Thermocool Fridge.

-Furniture

-One Satellite Dish with Decoder.

Family Properties

Olohunoje Family House at 71, Simpson Street, Ebutemeta, Lagos.

MINUTES OF THE PRELIMINARY MEETING ON THE DISTRIBUTION OF THE ESTATE OF THE LATE ALHAJI SIDIQUE ALABI SALEEMAN HELD AT THE SHARIA COURT OF APPEAL, ILORIN ON THURSDAY 19TH MAY, 2011

1.0 **ATTENDANCE**

1.	Hon. Kadi S. O. Muhammad	-	Chairman
2.	Hon. Kadi A. A. Idris	-	Officiating Minister
3.	Hon. Kadi S.M. AbdulBaki	-	Officiating Minister
4.	Hon. Kadi A. A. Owolabi	-	Officiating Minister
5.	Alhaji A. R. Ibrahim	-	Secretary
6.	Alhaji A. Moronike Sidique	-	Wife
7.	Alhaja Aishat Sidique	-	Wife
8.	Alhaja Saarat Sidique	-	Wife
9.	Alhaji abdulRaheem Ajumobi	-	Brother
10.	Alhaji Adeniyi Ajumobi	-	Brother
11.	Moroof Sidique	-	Son
12.	Lukman Sidique	-	Son
13.	Kamaldeen Sidique	-	Son
14.	Iyabo Yusuf (Mrs)	-	Daughter
15.	Alhaja Funmilayo Adisa	-	Daughter
16.	Modinat Yusuf (Mrs)	-	Daughter

17.	Amdalat Olagunju	-	Daughter
18.	Yusuf M. Gbalasa	-	Rec. Secretary
18.	Alhaji M. J. Dasuki	-	Asst. Rec. Secretary

2.0 **OPENING PRAYER**

The meeting opened with prayer led by Hon. Kadi A.A. Idris at 12.50 noon.

2.1 **OPENING REMARKS**

The Chairman of the panel Hon. Kadi S. O. Muhammad welcomed all the family of the deceased to the meeting and prayed for God's guidance. Meanwhile, he tendered the apology on behalf of Hon. Kadi M. O. AbdulKadir for his inability to attend the meeting.

3.0 **MATTERS ARISING**

3.1 **REQUEST LETTER**:

The letter written and signed by Abubakar Sidique Saleeman (Son) of the deceased requesting the Sharia Court of Appeal, for the distribution of the estate of his Late Father, Alhaji Sidique A. Saleeman was denied by all the family members present at the meeting. They added that they were not aware of the letter.

Meanwhile, in his own remark, counsel to the survivors of the deceased, Dan Zaria Esq., submitted that the family had earlier visited him to help them via the probate registry of the High Court of Justice, Ilorin to withdraw the cash estate of the deceased in Banks across Ilorin. He added that most of these Banks were visited and withdrawal of the deceased cash was done through the letter of

administration, except the account at the Zenith Bank Plc., in which Alhaja Saarat possesses all the documents.

However, Alhaja Saarat explained that she and her son decided to write the court because the family did not invite them while carrying out the process of devolution of the deceased property in which they too must involved.

Therefore, the panel directed Alhaja Saarat and other family members to submit all documents relating the estate in question through their Lawyers, Dan Zaria Esq., and Folorunsho H. I. Esq., respectively, so that the probate section of the Sharia Court would continue for peace to reign in the family.

4.0**CLOSING REMARKS**:

The panel directed the family to submit all the documents latest a week to this time of meeting through their counsels.

4.1 CLOSING PRAYER

The meeting closed with prayer led by Hon. Kadi A. A. Owolabi at 1.55 p.m.

SGD	**SGD**
(Hon. Kadi S.O. Muhammad)	(Yusuf M. Gbalasa)
Chairman	**Rec. Secretary**

KWS/SCA/ISC.172/4
20th October, 2011.

The Manager,
Zenith Bank Plc.,
No. 136, Abdul-Azeez Attah Road,
Surulere, Ilorin.
Sir,

WITHDRAWAL AND CLOSURE OF THE LATE ALHAJI SALMAN ALABI SIDIQUE

ACCOUNT NO: 4215105527 (SAVINGS)

1. I am directed to inform you that the family of the late Alhaji Salman Alabi Sidique (now deceased) invited the Sharia Court of Appeal, Ilorin to administer the estate of the deceased in accordance with Islamic injunctions. See annexure 1.
2. In view of the above, the court requests you to release the sum of =N=521,293.60 (Five hundred and twenty-one thousand, two hundred and ninety-three naira, sixty kobo) only of the deceased to enable us share to the beneficiaries according to Islamic Law.
3. This is in line with Rule of the Sharia Court of Appeal, Section 25 (h) (i) Cap 122 of the Sharia Court of Appeal of the Law of Northern Nigeria 1973, and Section 277 (2) C of the Constitution of the Federal Republic of Nigeria 1999, quoted below for ease of reference;

Section 25;

The Grand Kadi with the approval of the Governor may make Rules of court providing for any or all of the following matters'

(h) Securing the due administration of estate

(i) Requiring and regulating the filing if accounts of the administration of estate;

(j) ascertaining the values of estates.

Sections 277 of the Constitution:

"The Sharia Court of Appeal of a State shall in addition to such other jurisdiction as may be conferred upon it by the law of the State".

***For the purposes of sub-section (1) of this Section**, the*

Sharia Court of Appeal shall be competent to decide: any question of Islamic Persona Law

regarding a Wakf, gift, will or succession where the endower, donor or deceased person is a Muslim.

Looking forward to your early reply.

Thank you for your prompt anticipated co-operation.

SGD
Yusuf M. Gbalasa
For: Chief Registrar.

Zenith Bank Plc,
ILORIN 2 BRANCH
No. 136, Abdul-Azeez Attah Road,
Surulere, Ilorin, Kwara State.
November 01, 2011

The Chief Registrar,
Shariah Court fof Appeal,
Ilorin, Kwara State.
Attn: Yusuf M. Gbalasa
Dear Sir,

RE: WITHDRAWAL AND CLOSURE OF
LATE ALHAJI SIDIQUE SALMAN ALABI'S
FIXED DEPOSIT AND SAVINGS ACCOUNTS

We refer to your letter with Ref No. KWS/SCA/ISL.172/3 dated 27th

June, 2011 and forward herewith our Manager's Cheque NO. 3948 for the sum of =N=5,631,407.17 in favour of Chief Registrar, Shariah Court of Appeal, Ilorin, Kwara State being the balance in the above deceased customer's Fixed Deposit Account No. 9011615245 and Savings Account No. 2006469612 as requested in your above referenced letter.

Kindly acknowledge receipt of the Manager's Cheque on the attached copy of this letter.

Yours faithfully.

SGD
ZENITH BANK PLC
HEAD OF OPERATIONS

SGD
ZENITH BANK PLC
BRANCH HEAD

MINUTES OF THE 2ND MEETING ON THE DISTRIBUTION OF THE ESTATE OF THE LATE ALHAJI SIDIQUE ALABI SALMAN HELD AT THE SHARIA COURT OF APPEAL, ILORIN ON TUESDAY 20TH DECEMBER, 2011

1.0 ATTENDANCE

1.	Hon. Kadi A. A. Idris	-	Officiating Minister
2.	Hon.M. O. AbdulKadri	-	Officiating Minister
3.	Alhaji A. R. Ibrahim	-	Secretary
4.	Folorunsho A. Hussain	-	Solicitor
5.	Alhaji AbdulRaheem Ajumobi	-	Brother
6.	Alhaji Adeniyi Ajumobi	-	Brother
7.	Alhaji A. Moronike Sidique	-	Wife
8.	Sidique Lukman	-	Son
9.	Sidique Kamaldeen	-	Son
10.	Alhaja Saarat Sidique	-	Wife
11.	Sidique Moroof	-	Son
12.	Yusuf M. Gbalasa	-	Rec. Secretary
13.	Alhaji M. J. Dasuki	-	Asst. Rec. Secretary

2.0 OPENING PRAYER

The meeting opened with prayer led by Hon. Kadi M. O. AbdulKadir at 2.40 p.m

OPENING REMARKS

The officiating minister, Hon. Kadi A. A. Idris welcomed all the family members of the deceased to the meeting and prayed to God's guidance. Meanwhile, he tendered the apology of the two

(2) other officiating Ministers, for their inability to attend the meeting.

4.0 **READING OF THE LAST MINUTES**:

The Secretary read the minutes of the preliminary meeting. But was not adopted due to the Fifty thousand naira (=N=50,000.00) debt read against the deceased. The 3rd Wife of deceased, Alhaja Sarat Sidique raised objection against the debt. Thus, the panel directed Alhaja Sarat to invite her witness before the panel on Wednesday 28th December, 2011 unfailingly.

5.0 **ADJOURNMENT**

The meeting adjourned till Wednesday 28th December, 2011, Insha Allah.

6.0 **CLOSING PRAYER**

The meeting closed with prayer led by Alhaji M. J. Dasuki at 3.10 p.m.

SGD	**SGD**
(Hon. Kadi A. A. Idris)	(Yusuf M. Gbalasa)
Officiating Minister	**Rec. Secretary**

MINUTES OF THE 3RD MEETING ON THE DISTRIBUTION OF THE ESTATE OF THE LATE ALHAJI SIDIQUE ALABI SALMAN HELD AT THE SHARIA COURT OF APPEAL, ILORIN ON TUESDAY 27TH DECEMBER, 2011

1.0 ATTENDANCE

1.	Hon. Kadi A. A. Idris	-	Officiating Minister
2.	Hon.Kadi S. M. abdulBak	-	Officiating Minister
3.	Hon. Kadi A. A. Owolabi	-	Officiating Minister
4.	A. H. Folorunsho Esq.	-	Family Counsel
5.	Alhaja Sarat Sidique	-	Wife
6.	Sidique Toyin Hamdalat	-	Daughter
7.	Sidique O. Kamalden	-	Son
8.	Sidique O. Luqman	-	Son
9.	Sidique O. Usman	-	Son
10.	Alhaji Adeniyu Ajumobi	-	Brother
11.	Alhaji AbdulRaheem Ajumobi	-	Brother
12.	Alhaja Moronke Sidique	-	Wife
13.	Funilayo Adisa	-	Daughter
14.	Sidique Maroof	-	Son
15.	Alhaji Bolaji Hassan	-	In-attendance as witness
16.	Yusuf M. Gbalasa	-	Secretary

2.0 OPENING PRAYER

The meeting opened with prayer led by Alhaji AbdulRaheem Ajumobi at 2.10 noon

2.1 **OPENING REMARKS:**

The officiating minister, Hon. Kadi A. A. Idris welcomed all the family members of the deceased to the meeting and prayed to God's guidance.

3.0 **MATTERS ARISING**:

3.1 **DEBT:** Alhaji Bolaji Hassan who was invited to clarify the **=N=50,000.00** debt against the deceased narrated and informed the meeting that truly, Alhaji Sidique Salman of blessed memory sold a parcel of land for him for the sum of =N=250,000.00. But unfortunately he could not have the land collected due to some problems from the family of the deceased over the land. Therefore, the deceased promised to refund him the money. He added that he had collected =N=200,000.00 before the death of Alhaji Sidique, remaining the balance of =N=50,000.00. He brought and submit a paper signed by the deceased as evidence to show that he deceased owed him. Thus, after all the clarification, he said he has overlooked the money as gift to the family of the deceased.

4.0 **CLOSING REMARKS:**

The panel directed the family to see themselves as one and not to allow the estate to the deceased to create enmity among them.

5.0 **CLOSING PRAYER**

The meeting closed with prayer led by Hon. Kadi S. M. AbdulBaki at 4.25 p.m.

SGD	**SGD**
(Hon. Kadi A. A. Idris)	Yusuf M. Gbalasa)
Officiating Minister	**Rec. Secretary**

DISTRIBUTION OF THE ESTATE OF LATE
ALHAJI SIDIQUE ALABI SALMAN
REAL ESTATE DISTRIBUTION
WORKING PAPER 'A'

LIST OF HEIRS:

GROUP 'A'

1. Alhaja Rukayat M. Sidique	Wife
2. Maroof Sidique	Son
3. Lukman Sidique	Son
4. Abdulrashed Sidique	Son
5. Uthman O. Sidique	Son
6. Salimat I. Yusuf	Daughter

GROUP 'B'

1. Alhaja Aishat A. Sidique	Wife
2. Ahmed Rufai Sidique	Son
3. Hajia Adiza Funmi Akanbi	Daughter
4. Hajia Muibat Sidique	Daughter
5. Awawu Abolore Sidique	Daughter
6. Rabiat Sidique	Daughter

GROUP 'C'

1. Kamaldeen O. Sidique	Son
2. Medinat Yusuf	Daughter
3. Asiata Sidique	Daughter
4. Amudalat Sidique	Daughter

GROUP 'D

1. Alhaja Sarat Sidique — Wife
2. Abubakar Sidique Salman — Son

WORKING PAPER 'B'

LIST OF ITEMS OF THE ESTATE AS LISTED IN THE VALUATION REPORT

Property 1: Is known and addressed as Olorunoje Annex, Abata – Sunkere Are, Ilorin detached store / toilet valued at 4,800,000.00, 758,333.33 per room 250,000.00 attached store.

Property 2: Is known and addressed as shop 45, opposite Ilorin East Shopping Complex Maraba Garage Area, Ilorin consists two shop valued at = 850,000.00.

Grand Total = 5,650,000.00.

WORKING PAPER 'C'

FRACTIONAL SHARES OF REAL DISTRIBUTION

Total Estate = N5,650,000.00 1/8 of 5,650,000.00 =706,250.00 for the 3 Wives 706,250.00 ÷ 3 = 235,416. 666 for each wife.

Balance = 4, 943, 750.00 for 7 sons 8 Daughters

7 Sons = 14 Daughters

8 Daughters = 8

22 Working figure

i.e each daughter will have 224, 715. 909 worth of the real estate. While each son will have twice 449, 431. 818 worth of the real estate.

SUMMARY

1.	Wife	=	235, 416. 666 x 3	=	706, 250.00
2.	Son	=	449, 431. 818 x 7	=	3, 146, 022. 727
3.	Daughter	=	224, 715. 909 x 8	=	1,797,727.272
	Grand total				**N=5, 650,000.00**

WORKING PAPER 'D'

GROUP SHARES OF REAL ESTATE DISTRIBUTION

Name		**Entitlement**
Group 'A'		
1. Alhaja Rukayat M. Sidique	(Wife)	235, 416.666
2. Maroof Sidique	(Son)	449, 431.818
3. Lukan Sidique	(Son)	449, 431. 818
4. Abdulrasheed Sidique	(Son)	449,431. 818
5. Uthman O. Sidique	(Son)	449,431.818
6. Salimat I. Yusuf	(Daughter)	224,715.909
Total		=**N=2,257,859.847**
GROUP 'B'		
1. Alhaja Aishat A. Sidique	(Wife)	235,416.666
2. Ahmed Rufai Sidique	(Son)	449,431. 818
3. Hajia Adiza Funmi Akanbi	(Daughter)	224,715.909
4. Hajia Muibat Sidique	(Daughter)	224,715.909
5. Awawu Abolore Sidique	(Daughter)	224,715.909
6. Rabiat Sidique	(Daughter)	224,715. 909
TOTAL =		**=N=1,583,712.12**

GROUP C

1.	Kamaldeen O. Sidique	(Son)	449,431.818
2.	Medinat Yusuf	(Daughter)	224,715.909
3.	Asiata Sidique	(Daughter)	224,715,909
4.	Amudalat Sidique	(Daughter)	224,715.909
		Total	**=N=1,123,579.545**

GROUPD D

1.	Alhaja Sarat Sidique	(wife)	235,416.666
2.	Abubakar Sidique S.	(Son)	449,431.818
		Total -	**=N=684,848.484**

GROUP SUMMARY

1	Group 'A'	=	2,257, 859.847
2.	Group 'B'	=	1,583, 712.12
3.	Group 'C;	=	1,123,579.545
4.	Group 'D'	=	684,848.484
GRAND TOTAL		**=**	**N5, 650,000.00**

PHYSICAL SHARING OF REAL ESTATE DISTRIBUTION

Group A: Alhaja Rukayat Sidique and Children	**Entitlement** =N= 2,257,859.84
Property1: Located at Olorunoje Annex, Abata Sunkere Area, Ilorin 3No rooms and 1 No store	2,524,999.999
Total received	2,524,999.99
Debit balance	267,140.15
Group 'B' Alhaja Aishat A Sidique And Children	**Entitlement** **=N=** 1,583, 712. 12
Property 1: Located at Olorunoje Annex, Abata Surnkere Area, Ilorin 1 No room	758,333.33
Property 2: Shop 45, Located opposite, Ilorin East Shopping Complex, Maraba Garage, Ilorin 1 no Shop	850,000.00
TOTAL RECEIVED	**24,621.21**
Group'C : Kamaldeen, Mediant Asiata & Amudalat Sidique	**Entitlement** **=N=** **1,123,579,54**

Property 1: located at Olorunoje annex Abata Sunkere Area, Ilorin 1 no room	758,333.33
Total received	758,333.33
CREDIT BALANCE	**365,246.21**
Group D: Alhaja Sarat and Abubakar Sidique	**Entitlement** N684,848.48
Property 1: Located At Olorunoje Annex, Abata Sunkere Area, Ilorin 1 no room	758,333.33
TOTAL RECEIVED	**756,333.33**
Debit balance	**73,484.85**

SUMMARY/ BALANCE SHEET

S/N	GROUP	ENTITLEMENT	TOTAL RECEIVED	CREDIT BALANCE	DEBIT BALANCE
1	Group 'A'	2,257,859.84	2,524,999.99	-	267,140.15
2.	Group 'B'	1,583,712.12	1,608,333.33	-	24,621.21
3.	Group 'C'	1,123,579.54	758,333.33	365,246.21	-
4.	Group 'D'	684,848.48	758,333.33	-	

					73,484.85
	Total =	**5,650,000.00**	**5,650,000.00**	**365,246.21**	**365,246.21**

DISTRIBUTION OF THE ESTATE OF THE LATE ALHAJI SIDIQUE ALABI SALMAN

CASH DISTRIBUTION **19th Dec., 2011**

WORKING PAPER 'A'

LIST OF HEIRS:

GROUP 'A'

1. Alhaja Rukayat M. Sidique Wife
2. Maroof Sidique Son
3. Lukman Sidique Son
4. AbdulRashed Sidique Son
5. Uthman O. Sidique Son
6. Salimat I. Yusuf Daughter

GROUP 'B'

1. Alhaja Aishat A. Sidique Wife
2. Ahmed Rufai Sidique Son
3. Hajia Adiza Funmi Akanbi Daughter

4.	Hajia Muibat Sidique	Daughter
5.	Awawu Abolore Sidiaque	Daughter
6.	Rabiat Sidique	Daughter

GROUP 'C'

1.	Kamaldeen O. Sidique	Son
2.	Medinat Yusuf	Daughter
3.	Asiata Sidique	Daughter
4.	Amudalat Sidique	Daughter

GROUP 'D

1.	Alhaja Sarat Sidique	Wife
2.	Abubakar Sidique Salman	Son

WORKING PAPER 'B'

AVAILABLE CASH FOR DISTRIBUTION

An amount of Five Million, Six hundred and thirty-one thousand, four hundred and Seven naira Seventeen kobo (N5,631,407.17) only was received via the draft cheque of the Zenith Bank Plc, Ilorin Branch and a cash deposit of one hundred and fifty two thousand naira only (N152,000.00) was received from the family. Total Five Million, Seven eighty three thousand four hundred seven naira seventeen kobo (N5,783,407.17) only. Less the following.

(a) 56,000.00 for valuation report

(b) 648,000.00 legal fee (for Lawyers)

(c) 50,000.00 for administrative charge

(d) 50,000.00 for Debt

(e) 25,000.00 for family use.

N829, 000.00

Balance of 4,954, 407.17 for distribution

WORKING PAPER 'C'

Total cash = 4, 954, 407. 17

1/8 of 4, 954, 407. 17 = 619, 3000 892 for the 3 wives

619, 300 892 ÷ 3 = 206,433. 632 for each wife

Balance = 4, 335, 106. 278 for sons and 8 daughters

7 sons = 14

8 daughters = 8

22 working figure

i.e each Daughter will have 197, 050. 285 worth of the cash

while each son will have twice 394, 100. 570 worth of the cash.

SUMMARY

1. Wife = 206, 433. 632 x 3 = 619, 300.892
2. Son = 394, 100. 570 x 7 = 2,758,703.995
3. Daughter = 197, 050. 285 x 8 = 1,576,402.28

Grand Total = **=N= 4,954,407.16**

GROUP 'A'
ENTITLEMENT

1. Alhaja Rukayat M. Sidique	Wife	206,433. 632
2. Maroof Sidique	Son	394, 100.570
3. Lukman Sidique	Son	394,100.570
4. Abdulrashed Sidique	Son	394,100.570
5. Uthman O. Sidique	Son	394,100.570
6. Salimat I. Yusuf	Daughter	197,050.285

TOTAL = N 1,979,886.2

GROUP 'B'

1.	Alhaji Aishat A. Sidique	Wife	206,433.632
2.	Ahmed Rufai Sidique	Son	394,100.570
3.	Hajia Adiza Funmi Akanbi	Daughter	197,050.285
4.	Hajia Muibat Sidique	Daughter	197,050.285
5.	Awawu Abolore Sidiaque	Daughter	197,050.285
6.	Rabiat Sidique	Daughter	197,050.285

TOTAL = N1,388,735.342

GROUP 'C'

1.	Kamaldeen O. Sidique	Son	394, 100.570
2.	Mediant Yusuf	Daughter	197, 050 285
3.	Asiata Sidique	Daughter	197, 050. 285

4.	Amudalat Sidique	Daughter	197, 050.285
		TOTAL =	**N985, 251.425**

GROUP 'D

1.	Alhaja Sarat Sidique	Wife	206, 433. 632
2.	Abubakar Sidique Salman	(Son)	394, 100.570
		Total	**=N600, 534.202**

GROUP SUMMARY

1.	Group 'A'	=	1,979, 886.2
2.	Group 'B'	=	1,388,735.342
3.	Group 'C'	=	985, 251.425
4.	Group 'D'	=	600,534.202
	Grand Total	=	**N4, 954,407.16**

4.0 **CLOSING REMARKS:**

The panel admonished the heirs on the need to see themselves as one and continue to pray for the repose of the soul of their Late Father and Husband.

5.0 **APPRECIATION:**

Alhaji AbdulRaheem Ajumobi brother of the deceased on behalf of the family thanked the panel for the successful completion of the exercise and prayed for God's protection and guidance for them.

5.0 CLOSING PRAYER

The meeting closed with prayer led by Hon. Kadi M. O. AbdulKadir.

SGD	**SGD**
(Hon. Kadi A. A. IDRIS)	(Yusuf M. Gbalasa)
Officiating Minister	**Secretary**

REPORT

ON THE DISTRIBUTION OF THE ESTATE OF THE LATE SHEIKH DR. MUHIDEEN SULAIMAN IMAM OMODELE OF OMODELE COMPOUND, ADETA AREA, ILORIN.

DISTRIBUTED BY,

SHARIA COURT OF APPEAL, ILORIN,

P.M.B 1484,

ILORIN.

JUNE, 2012.

Apalara Close,
Behinde Govt, High School
Adeta Ilorin,
Kwara State.

20th July, 2010.

The Honorable Grand Kadi,
Kwara State Sharia Court of Appeal,
Ilorin,
Kwara State

Salamu Aleikun,

DISTRIBUTION OF THE ESTATE OF THE LATE SHEIK DR. MUYIDEEN OMODELE

With humble and respect we write your Lordship to help in the Sharing of the Estate of our deceased father Dr. Muyideen Omodele who died recently after a brief illness.

We will very grateful for your kind co-operation and understanding.

Thanks.

Yours Faithfully,
SGD
Sheikh Saheed Muyideen
For the Family

LIST OF BENEFICIARY OF WILLL

Group A

1. Alhaja Aminat Sulyman Omodele (Mother)

Group B

1. Alhaja Fatimoh Muyideen (Wife 1)
2. Sheik Saheed Muyideen (Son)
3. Muhammed Awwal Muyideen (Son)
4. Aminat Muyideen (Daughter)
5. Sofiyat Muyideen (Daughter)
6. Aishat Muyideen (Daughter)
7. Kaosarat Muyideen (Daughter)
8. Moriam Muyideen (Daughter)

Group C

1. Alhaja Hawau Muyideen (Wife 2)
2. Sheik Soliu Muyideen (Son)

LIST OF PROPERTIES TO BE SHARED

1. One Story Building personal house of the deceased in Apalara Area Adeta Ilorin
2. Nursery and Primary School in Apalara Area Adeta, Ilorin.
3. A land housing uncompleted building in Apalara Area Adeta, Ilorin.
4. 13 Cows in Apalara Area Adeta, Ilorin.

5. 16 Plots of vacancy Land in Gereu, along Kwara State Muslim welfare board behind Yebumot Hotel Adewole area, Ilorin.
6. 4 Bed room apartment Akerebiata area, Ilorin.
7. Petrol Filling Station Shao, Ilorin Kwara State.
8. 10 no. of Shop at Akerebiata Area, Ilorin.

MINUTES OF THE PRELIMINARY MEETING ON THE DISTRIBUTION OF THE ESTATE OF THE LATE (DR.) MUYIDEEN SULAIMAN IMAM OMODELE HELD AT HIS RESIDENCE ALONG IMAM DARUL-HIJRAH NURSERY AND PRIMARY SCHOOL, APALARA AREA, ILORIN ON MONDAY 2ND OF AUGUST, 2010.

1.01 ATTENDANCE:

1.	Hon. Kadi S.O. Muhammad	-	Chairman
2.	Hon. Kadi A. A. Idris	-	Officiating Minister
3.	Hon. Kadi S. M. AbdulBaki	-	Officiating Minister
4.	Alhaji .A R. Ibrahim	-	Panel Member
5.	Alhaja Fatimoh Omodele	-	1ST Wife
6.	Alhaja Hawau Omodele	-	2nd Wife
7.	Saheed Muyideen Omodele	-	Son
8.	Soliu Muyideen Omodele	-	Son
9.	Idris .S. Imam Omodele	-	Brother
10.	Alhaja Idiat Omodele	-	Sister
11.	Alhaji Mariam Shuaib	-	Sister

12.	Alhaja Ajoke Kadir	-	Sister
13.	Yusuf M. Gbalasa	-	Secretary
14.	Agboola Muhammad	-	In-attendance
15.	Kawu Nagya	-	In-attendance

2.01 OPENING PRAYER:

The opening prayer was led by Hon. Kadi A.A. Idris at 5.20pm.

3.01 OPENING REMARKS:

The chairman of the panel Hon. Kadi S.O Muhammad welcomed all the family members of the deceased to the preliminary meeting on the distribution of the estate and prayed for God's guidance at all times.

Later on, he introduced the panel members on estate distribution of the Sharia Court of Appeal Ilorin to the family of the deceased.

4.01. MATTERS ARISING:

(i) Letter Request: was read to the hearing of the family members for confirmation.

(ii) List of Properties: of the deceased was also confirmed except item no. 5 16 no. plots of land.

(iii) List of Heirs: was confirmed according to their groups.

(iv) Valuation Report: was also confirmed except item no. 5 indicated above. Therefore the panel directed for immediate correction from the valuer.

(v) Committee: The panel directed the family to form a committee to include the family members and the heirs as follows.

1.	Mall. Idris .S. Imam Omodele	-	Chairman
2.	Saheed Muyideen Omodele	-	Member
3.	Soliu Muyideen Omodele	-	Member
4.	Alhaja Idiat Omodele	-	Member
5.	Alhaji Mariam Shuaib	-	Member
6.	Alhaja Ajoke Kadir	-	Member

The work of the committee is to verify debt for or against the deceased, will either written or verbal, and cash at home or in the Bank accounts.

6.01 ADJOURNMENT: The meeting adjourned till Thursday 4th August, 2010 at the same venue.

7.01. CLOSING PRAYERS:

The meeting closed with prayer led by Hon. Kadi S.M. AbulBaki at 7.20p.m.

SGD	**SGD**
(Hon. Kadi S.O. Muhammed)	(Yusuf M. Gbalasa)
Chairman	Secretary
2/8/2010	2/8/2010

MINUTES OF THE 2ND MEETING ON THE DISTRIBUTION OF THE ESTATE OF THE LATE (DR) MUYIDEEN SULAIMAN IMAM OMODELE HELD AT HIS RESIDENCE ALONG IMAM DARUL-HIJRAH NURSERY AND PRIMARY SCHOOL, APALARA AREA, ILORIN ON THURSDAY 5TH OF AUGUST, 2010.

1.01 ATTENDANCE:

1.	Hon. Kadi I.A. Haroon	-	Grand Kadi
2.	Hon. Kadi S.O. Muhammad	-	Chairman
3.	Hon. Kadi S. M. AbdulBaki	-	Officiating Minister
4.	Alhaji .A R. Ibrahim	-	Panel Member
5.	Alhaja Fatimoh Muyideen	-	1ST Wife
6.	Alhaja Hawau Muyideen	-	2nd Wife
7.	Sheikh Saheed Muyideen	-	Son
8.	Sheikh Soliu Muyideen	-	Son
9.	Idris .S. Imam Omodele	-	Brother
10.	Alhaja Idiat Omodele	-	Sister
11.	Alhaji Mariam Shuaib	-	Sister
12.	Alhaja Ajoke Kadir	-	Sister
13.	Agboola Muhammad	-	In-attendance
14.	Kawu Nagya	-	In-attendance
15.	Yusuf M. Gbalasa	-	Secretary

1.03 : OPENING PRAYER:

The opening prayer was led by Hon. Kadi S.M. AbdulBaki at 5.20pm.

1.04. OPENING REMARKS:

The chairman of the panel Hon. Kadi S.O Muhammad welcomed all the family members of the deceased to the 2nd meeting on the distribution of the estate and prayed for God's guidance at all times.

1.05. LAST MINUTES:

Minutes of the preliminary meeting was read and unanimously adopted on motion moved and seconded by Idris S. Imam Omodele and Alhaja Idiat Omodele respectively.

1.06. MATTERS ARISING:

Agreement paper for the purchase of the said 10 no. plots of land in the valuation report was brought and submitted for confirmation at the meeting.

1.07. REPORT OF THE FAMILY COMMITTEE:-

The Committee reported that there was no debt for or against the deceased. It was submitted that the deceased bought a car for one of his Daughter Aminat Muhideen in which she has not taken possession before the deceased's death. The whole family consented to it that they were all aware of the gift.

1.08. CASH

The family observed that the deceased left ₦ 205,000 and it has been used for valuation report. The family is also awaiting ₦18, 000 to be collected from the U.I.T.H Ilorin and another ₦ 47,000 from Radio Kwara, Ilorin.

1.09. DISTRIBUTION AND ALLOTMENT

Items No. 1, the School at Apalara Village, Ilorin and Imam Darul-Hijrah Filling Station, located at Shao, Bode-Saadu Express

Road, were not meant for distribution. The family collectively agreed on joint ownership and to be supervised by the Kwara State Sharia Court of Appeal, Ilorin so that whatever comes as profit at the end of the year would be shared among the heirs according to the provisions of Islamic Law.

1.09 <u>CLOSING REMARKS</u>: The panel admonished the heirs and other family members to see themselves as one and not to allow the estate of the deceased to cause enmity among them.

1.10. <u>CLOSING PRAYER:</u> The meeting closed with prayer led by the Hon. Grand Kadi of 6.45pm.

SGD	**SGD**
(Hon. Kadi S. O. Muhammad)	(Yusuf M. Gbalasa)
Chairman	Secretary

MINUTES OF THE 3RD MEETING ON THE DISTRIBUTION OF THE ESTATE OF THE LATE SHEIKH (DR.) MUYIDEEN SULAIMAN IMAM OMODELE HELD AT SHARIA COURT OF APPEAL, ILORIN ON THURSDAY 2ND OF DECEMBER, 2010.

1.02 ATTENDANCE:

1.	Hon. Kadi I. A. Haroon	-	Grand Kadi
2.	Hon. Kadi S.O. Muhammad	-	Chairman
3.	Hon. Kadi A. A. Idris	-	Officiating Minister
4.	Hon. KadiS. M. AbdulBaki	-	Officiating Minister
5.	Hon. Kadi .M. O. AbdulKadir	-	Officiating Minister
6.	Hon. Kadi .A. A. Owolabi	-	Officiating Minister
7.	Alhaji A. R. Ibrahim	-	Panel Member
8.	Muyideen Fatimoh Imam	-	1ST Wife
9.	Muyideen Hawau Imam	-	2nd Wife
10.	Muyideen Aishat Imam	-	Daughter
11.	Idris Sulyman Imam Omodele	-	Brother
12.	Alhaji M. J. Dasuki	-	Panel Member
13.	AbdulKadir S. F.	-	In-attendance
14.	Ibrahim O. AbdulKadir	-	In-attendance
15.	Murtador S. Imam	-	In-attendance
16.	Yusuf M. Gbalasa	-	Secretary

2.01. **OPENING PRAYER:**

The opening prayer was led by Hon. Kadi A. A. Idris at 12.35pm.

3.01 OPENING REMARKS:

The chairman of the panel Hon. Kadi S.O Muhammad welcomed all the family members of the deceased to the 3rd meeting and prayed for God's guidance at all times.

Meanwhile, he welcomed the Hon. Grand Kadi of the Kwara State Sharia Court of Appeal, Ilorin. Hon. Kadi I. A. Haroon to the meeting and later on introduced the estate panel members and the 2 newly appointed Kadi's Hon. Kadi M. O. AbdulKadir and Hon. Kadi A. A. Owolabi to the family members of the deceased.

4.01 LAST MINUTES:

Minutes of the 2nd meeting was read and unanimously adopted on motion moved by Alhaja Fatimoh Muyideen Imam, second by Alhaja Hawau Muyideen Imam and adopted by all as amended.

5.01 MATTERS ARISING:

(i)**. CASH**

Mallam Idris S. Imam Omodele denied having knowledge of the said ₦ 205,000.00 in the deceased account as agreed by other members of the family meanwhile cash deposit of ₦ 18,000.00 was brought and submitted to the secretariat as being the amount of money collected from the U. I. T. H. Ilorin reported in item 1. 07 of the 2nd minutes of the meeting on the distribution of the estate of the deceased.

(ii) **CAR GIFT:**

Muyideen Aminat Imam a daughter of the deceased has now taken possession of the car gift as it was confirmed in the 2nd meeting.

(iii) **FRIDGE:**

Mallam Idris S. Imam observed that there is 1 no. fridge belonging to the deceased Muyideen at the family house Adeta Area, Ilorin as it was raise in the 2nd meeting.

(iv) **COW:**

The panel directed the family members to value the cows belonging to the deceased and submit its report in good time for distribution.

(v) **PROPERTY 1:** The school ay Apalara Area, Ilorin and

PROPERTY 2: Darul-Hijrah Petroleum Filling Station at Bode-Sa'adu Express road Ilorin.

The panel directed the family member to update detailed record of these properties and submit to the secretariat of the estate distribution unit before the next meeting.

(vi) **VALUATION REPORT:**

The panel directed the Secretariat to invite the valuer to update the valuation report into unit of rooms.

6.01 **CLOSING REMARKS:**

The Hon. Grand Kadi. I. A. Haroon prayed for the family and counsel them on the need to see themselves as one hence, the panel directed the secretariat to update the working papers in a week time.

7.01 **CLOSING PRAYER:**

The meeting closed with prayer offered by Hon. Kadi A. A. Owolabi at 2. 13 pm.

SGD	**SGD**
(Hon. Kadi S. O. Muhammad)	**(Yusuf M. Gbalasa)**
Chairman	Secretary
2/12/2010	2/12/2010

MINUTES OF THE 4TH MEETING ON THE DISTRIBUTION OF THE ESTATE OF THE LATE SHEIKH (DR.) MUYIDEEN SULAIMAN IMAM OMODELE HELD AT SHARIA COURT OF APPEAL, ILORIN ON WEDNESDAY 26TH OF JANUARY, 2010

1. **01 ATTENDANCE:**

1.	Hon. Kadi S. O. Muhammad	-	Chairman
2.	Hon. Kadi S. M. AbdulBaki	-	Officiating Minister
3.	Hon. Kadi .M. O. AbdulKadir	-	Officiating Minister
4.	Hon. Kadi .A. A. Owolabi	-	Officiating Minister
5.	Alhaji A. R. Ibrahim	-	Panel Member
6.	Alhaja Fatimoh Muyideen Imam	-	Wife 1
7.	Alhaja Hawau Muyideen Imam	-	Wife 2
8.	Sheikh Soliu Muhideen Imam	-	Son
9.	Aishat Muyideen Imam	-	Daughter
10.	Alhaji M. J. Dasuki	-	Panel Member
11.	Yusuf M. Gbalasa	-	Secretary

2. **1.01. OPENING PRAYER:**

The meeting opened with prayer led by Hon. Kadi S. M. Abdul-Baki at 1.05. Pm

1.01 OPENING PRAYER:

The chairman of the panel, Hon. Kadi S. O. Muhammad welcomed all the family members of the deceased to the 4th meeting on the distribution of the estate and prayed for God's guidance at all times.

Meanwhile, the meeting could not hold due to the absence of group 'A' members representing the mother of the deceased. Alhaja Aminat Sulaiman Imam Omodele.

1.01 CLOSING REMARKS:

The panel observed that on our part, all our working papers leading to the completion of the exercise were ready therefore, the chairman of the panel directed the secretary to write Alhaji Idris S. Imam Omodele and inform him of the need for the attendance of the representative(s) of the mother who constituted Group 'A' for the distribution exercise.

2. 01 ADJOURNMENT:

The meeting adjourned till 9th February, 2011 at 11.00 am.

CLOSINH PRAYER:

The meeting closed with prayer led by Hon. Kadi M. O. Abdul-Kadir and Hon. Kadi A. A. Owolabi at 1 30.pm

SGD	**SGD**
(HON. KADI S. O. MUHAMMAD)	**(YUSUF M. GBALASA)**
Chairman	**Secretary**

Alhaja Aminat S. Imam Omodele
Imam Omodele Compound,
Adeta,
Ilorin.

Through:
Idris S. Imam Omodele.

Assalamu Aleakum,

RE: DISTRIBUTION OF THE ESTATE OF THE LATE SHIEKH (DR.) MUHIDEEN SULAIMAN IMAM OMODELE

I am directed to inform you that the family of the Late Sheikh (Dr.) Muhideen Imam Omodele (now deceased) invited the Sharia Court of Appeal, Ilorin to administer the estate of the deceased in accordance with Islamic injunctions.

Meanwhile, the matter has reached distribution stage which requires your presence or your representative. Idris S. Imam Omodele who has been attending meeting wrote to the Court that he could no longer attend again.

Therefore, the panel urged you to send a representative within a week of this letter to enable us complete the exercise in good time.

Find attached photocopy of the letter.

Thank you for your expected co-operation.

SGD
Yusuf M. Gbalasa
For: Chief Registrar

Omodele Compound,

Adeta, Ilorin.
Kwara State.
8/02/2011.

Chief Registrar,
Sharia Court of Appeal,
P.M.B. 1484,
Ilorin,
Kwara State.

Asalamu Alaykun.

RE: NOTICE OF MEETING

With profound respect, on behalf of Omodele's family. I wish to commend and appreciate the brotherhood concerns of the honourable Sharia Court of Appeal concerning the distribution of the estate of our beloved **Sheikh Muhideen Imam Suleiman**

My Lord, would you please allow me to state as follow:

1. That I was verbally invited on the phone to appear at the Court on the 24th January, 2011 by one of the Staff of the Court.
2. That I told the bearer that I will not be around due to some circumstances that were beyond my control.
3. That the family of the deceased is conscious of the dignity of the panel and cannot afford to take it with levity.

4. That the family gladly consented the proceedings to continue with the presence of the immediate family of the deceased.

Thanks you sir.

Yours in Islam

SGD
Idris Sueiman Imam Omodele

Ref no: KWS/SCA/ISL.150/23

27TH January, 2011.

Alhaja Fatimoh Muhideen Imam,
Imam Daruh al-Hijrah Way,
Apalara Area,
Ilorin.

Asalamu Aleakum,

RE: DISTRIBUTION OF THE ESTATE OF THE LATE SHEIKH (DR.) MUHIDEEN IMAM OMODELE
NOTICE OF MEETING

1. I am directed to inform you to arrange for the affected family members/heirs of the Late Sheikh (Dr.) Muhideen Omodele to attend the 5th meeting on the distribution of the estate of the deceased.
2. The meeting will God-Willing take place as states below:

   Date: Wednesday 9/2/2011.
   Venue: Sharia Court of Appeal, Ilorin.
   Time: 11.00 am prompt.
3. Please, be punctual.

SGD
Yusuf M. Gbalasa
For: Chief Registrar.

MINUTES OF THE 5TH MEETING ON THE DISTRIBUTION OF THE ESTATE OF THE LATE SHEIKH (DR.) MUYIDEEN SULAIMAN IMAM OMODELE HELD AT SHARIA COURT OF APPEAL, ILORIN ON WEDNESDAY 9THOF FEBRUARY, 2010.

1. 01 ATTENDANCE:

1.	Hon. Kadi S. O. Muhammad	-	Chairman
2.	Hon. Kadi S. M. AbdulBaki	-	Officiating Minister
3.	Hon. Kadi .M. O. AbdulKadir	-	Officiating Minister
4.	Hon. Kadi .A. A. Owolabi	-	Officiating Minister
5.	Alhaji A. R. Ibrahim	-	Panel Member
6.	Alhaja Fatimoh Muyideen Imam	-	Wife
7.	Alhaja Hawau Muyideen Imam	-	Wife
8.	Aishat Muyideen Imam	-	Daughter
9.	Alhaji M. J. Dasuki	-	Panel Member
10.	Yusuf M. Gbalasa	-	Secretary

2.01. OPENING PRAYER:

The meeting opened with prayer led by Hon. Kadi S. M. Abdul-Baki at 2. 35 pm.

201 OPENING REMARKS:

The Chairman of the panel, Hon. Kadi S. O. Muhammad welcomed all the family members of the deceased to the meeting on the distribution of the estate and prayed for God's guidance at all times.

Meanwhile, the minutes of the last meeting was read and unanimously adopted on motion moved by Hajia Hawau Muhideen Imam and seconded by Hajia Fatimoh Muhideen Imam respectively.

4.0 MATTERS ARISING

REPRESENTATIVE OF THE MOTHER AT THE DECEASED:

In view of Alhaji Idris S. Omodele's refusal to represent mother of the deceased, the panel directed the secretary to invite Alhaja Aminat S. Omodele (mother of the deceased) to send another representative to the panel in the next meeting in as much as she is a stakeholder in the distribution exercise. The panel added that the letter must be written through Alhaji Idris S. Omodele and copy to the wives of the deceased.

5.01 CLOSING REMARKS:

The panel was really frown about the refusal of the representative of the mother of the deceased at the meetings. They added that the panel would not continue to tolerate this type of attitude.

6.01 CLOSING PRAYER:

The meeting closed with prayer led by Hon. Kadi A. A. Owolabi at 1.20 pm.

SGD	SGD
(**Hon. Kadi S. O. Muhammad)**	**(Yusuf M. Gbalasa)**
Chairman	Secretary
	Ref No: KWS/SCA/ISL.150/26

29TH March, 2011.

Alhaja Fatimoh Muhideen Imam,
Imam Daruh Al-Hijrah Way,

Apalara Area,

Ilorin.

Assalamu Aleakum,

RE: DISTRIBUTION OF THE ESTATE OF THE LATE SHEIKH (DR.) MUHIDEEN IMAM OMODELE
NOTICE OF MEETING

I am directed to inform you to arrange for the affected family members/heirs of the Late Sheikh (Dr.) Muhideen Imam Omodele to attend the 6th meeting on the distribution of the estate of the deceased.

The meeting will God-willing take place as stated below:

Date: Monday 04/04/2011.

Venue: Sharia Court of Appeal, Ilorin.

Time: 11. 00 am prompt.

Please be punctual.

SGD
Yusuf M. Gbalasa
For: Chief Registrar.

MINUTES OF THE 6TH MEETING ON THE DISTRIBUTION OF THE ESTATE OF THE LATE SHEIKH (DR.) MUYIDEEN SULAIMAN IMAM OMODELE HELD AT SHARIA COURT OF APPEAL, ILORIN ON TUESDAY 12TH OF APRIL, 2010.

1. 01 ATTENDANCE:

1.	Hon. Kadi S. O. Muhammad	-	Chairman
2.	Hon. Kadi S. M. AbdulBaki	-	Officiating Minister
3.	Alhaja Fatimoh Muyideen Imam	-	Wife
4.	Alhaja Hawau Muyideen Imam	-	Wife
5.	Aishat Muyideen Imam	-	Daughter
6.	Alhaji M. J. Dasuki	-	Panel Member
7.	Yusuf M. Gbalasa	-	Secretary

2.00. OPENING PRAYER:

The meeting opened with prayer led by Hon. Kadi S. M. Abdul-Baki at 12. 03 pm.

2.01. OPENING REMARKS:-

The Chairman of the panel, Hon. Kadi S. O. Muhammad welcomed all the family members of the deceased to the meeting, and prayed for God's guidance all times.

Meanwhile, he tendered the apology of the 3 officiating ministers and the secretary for their inability to attend the meeting.

Later on, the minutes of the last meeting was read and unanimously adopted on motion moved by Alhaja Fatimoh Muhideen Imam and seconded by Alhaja Hawau Muhideen Imam respectively.

3.00 MATTERS ARISING:-

The panel was not happy with the absence of the representative of the mother of the deceased for the 3rd time having promised to attend. Therefore, they directed that the Imam of Omodele Mosque Adeta, Ilorin and 2 other male adults in the area be invited to witness the process of the distribution exercise. They added that too much time is been wasted on the matter.

3.01 CASH:-

The panel directed that the cash deposit of Nine hundred and ninety two (992,000.00) of the deceased be distributed and shared of each heir, be given to them individually but those in far places may write an authority letters for collection on their behalf.

4.00 CLOSING REMARKS:-

The panel directed that distribution exercise of the estate of the deceased would continue even without the representative of the mother of the deceased having themselves giving the panel the authority to continue.

5.00 ADJOURNMENT:-

The meeting adjournment to Wednesday 20th April, 2011 at 12.00 noon.

6.00 CLOSING PRAYER:-

The meeting closed with prayer led by Hon. Kadi S. M. AbdulBaki

at 12.45 pm.

SGD	**SGD**
(Hon. Kadi S. O. Muhammad)	**(Yusuf M. Gbalasa)**
Chairman	Secretary

MINUTES OF THE 7TH MEETING ON THE DISTRIBUTION OF THE ESTATE OF THE LATE SHEIKH (DR.) MUYIDEEN SULAIMAN IMAM OMODELE HELD AT SHARIA COURT OF APPEAL, ILORIN ON WEDNESDAY 20TH OF APRIL, 2011.

1. 01 ATTENDANCE:

1. Hon. Kadi S. O. Muhammad - Chairman

2. Hon. A. A. Idris - Officiating Minister

3. Hon. Kadi S. M. AbdulBaki - Officiating Minister

4. Hon. A. A. Owolabi - Officiating Minister

5. Alhaji A. R. Ibrahim - Secretary

6. Alhaja Fatimoh Muyideen Imam - Wife

7. Alhaja Hawau Muyideen Imam - Wife

8. Sheikh Soliu Muhideen Imam - Son

9. Aishat Muyideen Imam - Daughter

10. Alhaji M. J. Dasuki - Asst. Secretary

11. Yusuf M. Gbalasa - Rec. Sec

2. 00 OPENING REMARKS:-

The Chairman of the panel welcomed all the family members of the deceased to the meeting. Meanwhile, he tendered the apology of the Hon. Kadi M. O. AbdulKadir for his inability to attend the meeting.

Later on, the minutes of the last meeting was read and unanimously adopted on motion moved by Alhaja Fatimoh Muhideen Imam and seconded by Alhaja Hawau Muhideen Imam respectively.

3.00 MATTERS ARISING:

3. 01 VIST TO ADETA MOSQUE:-

The panel further directed the secretary to visit a mosque nearest to Imam Omodele Compound Adeta, Ilorin today and invite the Imam of the mosque and 2 other male adults in the area, to attend the next meeting. They added that the panel cannot continue to waste time on the matter.

3. 02 CASH:

The panel directed the secretary to pay Sheikh Soliu Muhideen Imam, his share of cash distribution immediately, adding that Sheikh Saheed Muhideen could phone from Saudi Arabia if he wants his share to be paid to his mother on his behalf.

4 .00 CLOSING REMARKS:

The panel advised the family to continue to exercise patience on the matter. They added that the panel will do everything possible to ensure that the matter reached completion in good time.

The chairman of the panel on his own thanked all Officiating Minister for their support and appreciates their co-operation so far.

4. 00 ADJOURNMENT:-

The meeting adjournment till Wednesday 27th April, 2011 at 12. 00 noon.

6.00 CLOSING PRAYER:

The meeting closed with prayer led by Hon. Kadi A. A. Owolabi at 2. 00 pm.

SGD	**SGD**
(Hon. Kadi S. O. Muhammad)	**(Yusuf M. Gbalasa)**
Chairman	Recording Secretary

MINUTES OF THE 8TH MEETING ON THE DISTRIBUTION OF THE ESTATE OF THE LATE SHEIKH (DR.) MUYIDEEN SULAIMAN IMAM OMODELE HELD AT SHARIA COURT OF APPEAL, ILORIN ON WEDNESDAY 27TH OF APRIL, 2011.

1. 01 ATTENDANCE:

1.	Hon. Kadi S. O. Muhammad	-	Chairman
2.	Hon. A. A. Idris	-	Officiating Minister
3.	Hon. Kadi S. M. AbdulBaki	-	Officiating Minister
4.	Hon. Kadi M. O. AbdulKadir	-	Officiating Minister
5.	Hon. A. A. Owolabi	-	Officiating Minister
6.	Alhaji A. R. Ibrahim	-	Secretary
7.	Alhaja Fatimoh Muyideen Imam	-	Wife
8.	Alhaja Hawau Muyideen Imam	-	Wife
9.	Aishat Muyideen Imam	-	Daughter
10.	Alhaji Shuaib Nurudeen	-	Imam Onikoyi
11.	Alhaji Woli Oriolowo	-	Member of the mosque
12.	Ismail Nurudeen	-	Member of the mosque
13.	Alhaji M. J. Dasuki	-	Assistant Recording Secretary
14.	Yusuf M. Gbalasa	-	Recording Secretary.

2.00 OPENING PRAYER:-

The meeting opened with prayer led by Hon. Kadi A. A. Idris at 1.05 pm.

2.01 OPENING REMARKS:-

The Chairman of the panel welcomed all the family members of the deceased to the meeting and prayed for God's guidance at all times.

Meanwhile, on behalf of the panel, the chairman welcomed Imam Onikoyi of Adeta Mosque Alhaji Shuaib Nurudeen and his entourage to the meeting.

2.02 LAST MINUTES:-

The minutes of the last meeting was read and unanimously adopted on motion moved by Hajia Fatimoh Muhideen and seconded by Hajia Hawau Muhideen respectively.

3.00 MATTERS ARISING:

3.01 PURPOSE OF INVITING THE IMAM:-

The panel informed Imam Onikoyi, Alhaji Nurudeen of his effort so far towards the distribution of the estate of the late Dr. Muhideen Imam that up till now the representative(s) of the mother of the deceased Alhaja Aminat Sulaiman Omodele has refused to attend and witness the processes of the exercise. While, responding the Imam noted that though he cannot collect anything on behalf of Alhaja Aminat (mother of the deceased) but promised to talk to Mallam Idris Sulaiman Omodele and Alhaja Idiat both children of mother of the deceased.

3.02 SHEKH SAHEED:-

The panel observed that Saheed Muhideen has directed his share of cash estate be paid to his mother Alhaja Fatimoh Muhideen.

5.00 CLOSING REMARKS:-

The panel urged Alhaji Nurudeen Imam Onikoyi of Adeta Mosque to talk to Mallam Idris and other Sisters of the deceased to come and represent their mother in the next meeting or else, the share of their mother would be kept and remain in the custody of the court. They added that the panel would not continue and allow them to waste time on the matter.

4.01 CLOSING PRAYER:-

The closing prayer was led by Alhaja Shuaib Nurudeen, the Imam Onikoyi of Adeta Mosque at 2. 00 pm.

SGD	**SGD**
(Hon. Kadi S. O. Muammed)	**(Yusuf M. Gbalalsa)**
Chairman	Recording Secretary
27/04/2011	27/04/2011

MINUTES OF THE 9TH MEETING ON THE DISTRIBUTION OF THE ESTATE OF THE LATE SHEIKH (DR.) MUYIDEEN SULAIMAN IMAM OMODELE HELD AT SHARIA COURT OF APPEAL, ILORIN ON TUESDAY 24THOF MAY, 2011.

1. 01 ATTENDANCE

1.	Hon. A. A. Idris	-	Officiating Minister
2.	Hon. Kadi S. M. AbdulBaki	-	Officiating Minister
3.	Hon. A. A. Owolabi	-	Officiating Minister
4.	Alhaji A. R. Ibrahim	-	Secretary
5.	Alhaja Fatimoh Muyideen Imam	-	Wife
6.	Alhaja Hawau Muyideen Imam	-	Wife
7.	Aishat Muyideen Imam	-	Daughter
8.	Yusuf M. Gbalasa	-	Recording Secretary

2.00 OPENING PRAYER:-

The meeting opened with prayer led by Hon. Kadi S. M. AbdulKadir at 1.10 pm.

1.01 OPENING REMARKS:-

The Officiating Minister, Hon. Kadi A. A. Idris who presided the meeting welcomed all the family members of the deceased to the meeting and prayed for God's guidance at all time. Meanwhile, he tendered the apology of the Hon. Chairman of the panel and other Officiating Minister for their inability to attend the meeting.

3.00 READING OF THE MINUTES:-

The minutes of the last meeting was read and unanimously adopted on motion moved and seconded by Alhaja Fatimoh Muhideen Imam and Alhaja Hawau Muhideen Imam respectively.

4.00 MATTERS ARISING:

4.01 COW DISTRIBUTION

Cows of the deceased were distributed accordingly among the heirs as follows.

Distribution / Allotment

COW DISTRIBUTION

FRACTIONAL SHARES OF COW DISTRIBUTION.

No. of Cows	=	34
Total Value	=	1,587,000.00
1/6 of 1,587,000.00	=	264,500.00 for the mother
1/8 of 1,587,000.00	=	198,375.00 for the two wives
198,375 / 2	=	99,187.5 for each wife

Balance = 1,124,125.00 for 3 Sons and 5 Daughters

3 Sons	=	6
5 Daughter	=	5
		11 Working Figure

I e each Daughter will have 102,193.181 worth of the Cow.
while each Son will have twice 204,386.363 worth of the Cow.

SUMMARY

Mother	=	264,500.00	x	1	=	264,500.00
Wife	=	97,187.5	x	2	=	198.375.00
Son	=	204,386.363	x	3	=	613,159.090
Daughter	=	102,193.181	x	5	=	510,965.905
		GRAND TOTAL			=	**N 1,587,000.00**

GROUP SUMMARY OF COW DISTRIBUTION

GROUP 'A'		**ENTITLEMENT**
1. Alhaja Aminat S. Muhideen	(Mother)	264,500.00

GROUP 'B'

1.	Alhaja Fatimoh Muhideen	(Wife)	99,187.5
2.	Sheikh Saheed Muhideen	(Son)	204,386.363
3.	Muhammad Awwal Muhideen	(Son)	204,386.363
4.	Aminat Muhideen	(Daughter)	102,193.181
5.	Sofiyat Muhideen	(Daughter)	102,193.181
6.	Aishat Muhideen	(Daughter)	102,193.181
7.	Kaosarat Muhideen	(Daughter)	102,193.181
8.	Mariam Muhideen	(Daughter)	102,193.181

Total = ₦ 1,018,926.133

GROUP 'C'

1.	Alhaja Hawau Muhideen	(Wife)	99,187.5
2.	Sheikh Soliu Muhideen	(Son)	204,386.363

Total = ₦ 303,573.863

DISTRIBUTION / ALLOTMENT

GROUP 'A' **ENTITLMENT**
Alhaja Aminat S. Omodele **264,500.00**

S/N	NO OF COW	VALUE
1.	Big cow female (2no)	140,000.00
2.	Medium Size (2no)	100,000.00
3.	Small size (1no)	30,000.00
	Total Received	**₦ 270,000.00**
	Debit Balance	**₦ 5,500.00**

GROUP 'B' **ENTITLMENT**
Alhaja Fatimoh Muhideen and Children **1,018,926.133**

S/N	NAME	NO OF COW	VALUE
1.	Alhaja Fatimoh	Big cow Male (1no)	90,000.00
2.	Sheikh Saheed	Medium Size (4no) Baby cow A (1no)	200,000.00 7,000.00
3.	Muhammed Awwal Muhideen	Medium size (2no) Pregnant cow (1no)	100,000.00 60,000.00
4.	Aminat	Medium size (2no)	100,000.00

	Muhideen		
5.	Sofiyat Muhideen	Medium size (2no)	100,000.00
6.	Kaosarat Muhideen	Medium size (2no)	100,000.00
7.	Aishat Muhideen	Medium size (2no)	100,000.00
8.	Mariam Muhideen	Medium size (2no) Small size (1no)	100,000.00 30,000.00
		Total Received	**₦ 987,000.00**
		Credit Balance	**₦ 31,926.133**

GROUP 'C' **ENTITLMENT**

Alhaja Hawau Muhideen and Soliu **303,573.863**

S/N	NAME	NO OF COW	VALUE
1.	Alhaja Hawau Muhideen	Big cow Male (1no)	90,000.00
2.	Sheikh Soliu Muhideen	Medium Size (4no) Baby cow A (2no) Baby cow B (2no)	200,000.00 14,000.00 12,000.00
		Total Received	**₦316,000.00**

Debit Balance	₦
12,426.137	

5.00 <u>CLOSING PRAYER:-</u>

The meeting closed with prayer led by Hon. Kadi A. A. Owolabi at 2.00 pm.

SGD	SGD
(Hon. Kadi A. A. Idris)	**(Yusuf M/ Gbalasa)**
Officiating Minister	Recorded Secretary
24/5/2011	24/5/2011

DISTRIBUTION OF THE ESTATE OF THE LATE SHEIKH (DR.) MUHIDEEN SULAIMAN IMAM OMODELE

CASH DISTRIBUTION

WORKING PAPER 'A'

LIST OF HEIRS:

GROUP 'A'

1. Alhaja Aminat S. Omodele (Mother)

GROUP 'B'

1. Alhaja Fatimoh Muhideen Imam (Wife)
2. Sheikh Saheed Muhideen Imam (Son)
3. Muhammed Awwal Muhideen Imam (Son)
4. Aminat Muhideen Imam (Daughter)
5. Sofiyat Muhideen Imam (Daughter)
6. Aishat Muhideen Imam (Daughter)
7. Kaosarat Muhideen Imam (Daughter)
8. Mariam Muhideen Imam (Daughter)

GROUP 'C'

1. Alhaja Hawau Muhideen Imam (Wife)
2. Sheikh Soliu Muhideen Imam (Son)

CASH DISTRIBUTION

WORKING PAPER 'B'

AVAILABLE CASH FOR DISTRIBUTION

An amount of Twenty Eight Thousand Eight Hundred Naira only (₦ 28,800.00) was received via the sale of a pregnant cow and Four Thousand naira (₦ 4,000.00) received from Aminat Muhideen

Imam as the amount lent from the deceased. Totaling Thirty two thousand Eight Hunderd naira only (₦ 32,800).

WORKING PAPER 'C'
FRACTIONAL SHARES OF CASH DISTRIBUTION

Total Cash	=	32,800.00
1/6 of 32,800.00	=	5,466.666 for the Mother
1/8 of 32,800.00	=	4,100.00 for the 2 Wives
4,100.00 / 2	=	2,050 for each Wife
Balance	=	23,233.334 for 3 Sons and 5 Daughter

3 Son	=	6
5 Daughter	=	5
		11 Working Figure

i.e each Daughter will have 2,112.121 worth the cash.

while each Son will have twice 4,224.242 worth of the cash.

SUMMARY

1.	Mother	= 5,466.666	x	1	=	5,466.666
2.	Wife	= 2,050.00	x	2	=	4,100.00
3.	Son	= 4,224.242	x	3	=	12,672.727
4.	Daughter	= 2,112.121	x	5	=	10,560.605
		Grand Total			=	**₦ 32,800.00**

WORKING 'D'
INDIVIDUAL/ GROUP SHARES OF CASH DISTRIBUTION

GROUP 'A'	ENTILTMENT	SIGN
1. Alhaja Aminat S. Omodele	(Mother)	5,466.666

GROUP 'B'

1. Alhaja Fatimoh Muhideen	(Wife)	2,050.00	**sgd**
2. Sheikh Saheed Muhideen	(Son)	4,224.242	**sgd**
3. Muhammed Awwal Muhideen	(Son)	4,224.242	**sgd**
4. Aminat Muhideen	(Daughter)	2,112.121	**sgd**
5. Sofiyat Muhideen	(Daughter)	2,112.121	**sgd**
6. Aishat Muhideen	(Daughter)	2,112.121	**sgd**
7. Kaosarat Muhideen	(Daughter)	2,112.121	**sgd**
8. Maraim Muhideen	(Daughter)	2,112.121	**sgd**

Total = N 21,059.089

GROUP 'C'

9. Alhaja Hawau Muhideen	(Wife)	2,050.00	**sgd**
10. Sheikh Soliu Muhideen	(Son)	4,224.242	**sgd**

Total = ₦ 6,274.242

GROUP SUMMARY

1. GROUP 'A'	=	5,466.666
2. GROUP 'B'	=	21,059.089
3. GROUP 'C'	=	6,274.242

GRAND TOTAL = ₦ 32,800.00

WORKING PAPER 'B'
LIST OF ITEMS OF THE ESTATE AS LISTED IN THE VALUATION REPORT

1. **PROPERTY 2:** (Boys Quarter) comprise 3 no. Small building, Mini Flat of 2no rooms and a single room (library) building valued as follows:

(a) Mini Flat = ₦ 550,000.00
(b) 2no rooms = ₦ 482,650.00
(c) Library = ₦ not for distribution
Total = ₦ 1,032,650.00

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2. **PROPERTY 4:** is known and addressed as plot no 75, Sobi road, Akerebiata Area, Ilorin consist 4no bedroom bungalow and 2no rooms at the rear wing valued at
   (a) 4 no bedroom = ₦ 3,000,000.00
   (b) 2no room = ₦ 800,000.00
   Total : ₦ 3,800,000.00

3. **PROPERTY 6:** is a landed property at DawuduVillage, Ilorin consist 10no plots of land partly fenced to an average height valued at (₦ 250,000.00 each).
   Total = 2,500,000.00
4. **PROPERTY 7:** is 10no Shops located at the filling station Akerabiata Area, Sobi Road Ilorin. Valued at (₦ 130,000.00 each).

Total = 1,300,000.00

5. **Property 8:** are Vehicles:
   (a) Peugeot 505 Car = 105,000.00
   (b) Sienna Bus Car = 450,000.00
   (c) V – Boot Lao Car = 150,000.00

Total : 705,000.00

GRAND TOTAL = 9,337,650.00

WORKING PAPER 'C'

FRACTIONAL SHARES OF REAL ESTATE DISTRIBUTION

Total Estate	=	9,337,650.00
1/6/ of 10,117,650.00	=	1,556,275.00
For the mother	=	1,167,206.25 the two wives
The two wives	=	583,603.12 for each wife
Total Estate	=	9,337,650.00
Less	=	1,556,275.00
Less	=	6,167,206.25
Balance	=	6,614,168.75 for 3 Sons & 5 Daughters

3	Sons	=	6
5	Daughters	=	5
		=	11 Working Figures

i.e each Daughter will have the 601,288.06 worth of the estate.
while each Son will have twice 1,202,976.13 worth of the estate.

SUMMARY

1.	Mother	=	1,556,275.00	x	1 = ₦1,556,275.00
2.	Wife	=	583,603.12	x	2 = ₦ 1,167.206.25
3.	Son	=	1,202,976.13	x	3 = ₦ 3,607,728.40
4.	Daughter	=	601,288.06	x	5= ₦ 3,006,440.03

GRAND TOTAL = ₦ 9,337,650.00

WORKING PAPER 'D

GROUP SHARES OF REAL ESTATE DISREIBUTION

GROUP 'A'		**ENTITLEMENT**
1. Alhaja Aminat Omodele	(Mother)	1,556,275.00

GROUP 'B'

1. Alhaja Fatimoh Muhideen	(Wife)	583,603.12
2. Sheikh Saheed Muhideen	(Son)	1,202,576.13
3. Muhammad Awwal Muhideen	(Son)	1,202,576.13
4. Aminat Muhideen	(Daughter)	601,288.06
5. Sofiyat Muhideen	(Daughter)	601,288.06
6. Kaosarat Muhideen	(Daughter)	601,288.06
7. Aishat Muhideen	(Daughter)	601,288.06
8. Mariam Muhideen	(Daughter)	601,288.06
	TOTAL	**5,995,195.07**

GROUP 'C'

1. Alhaja Hawau Muhideen	(Wife)	583,603.12
2. Sheikh Soliu Muhideen	(Son)	1,202,575.13
	TOTAL	**1,786,179.25**

Distribution / Allotment

GROUP 'A'

Alhaja Aminat Sulaiman (Mother) = ₦1, 556,275.00

1. Property 6 = 1 no. of land at Dawudu Village = ₦ 250,000.00
2. Property 7 = 10 no. Shops at Akerebiata Ilorin = ₦ 1,300,000.00

Credit Balance = ₦ 6, 275.00

GROUP 'B': Alhaja Fatimoh and Children = ₦5, 995,195.07

(a) Mini flat = ₦ 550,00.00

1. Property 2: (Boys Quarter) (b) 2no of rooms = ₦ 482,650.00
2. Property 4: 4no Bedroom at Akerebiata Area, Ilorin = ₦ 3,800,000.00
3. Property 6: 6no of Plots at Dawudu Village, Ilorin = ₦1,500,000.00

Property 8: Vehicle – (a) Peugeot 505 car = ₦ 105,000.00

(b) Sienna Bus car = ₦ 450,000.00

Total Received = ₦6, 887,650.00

Debit Balance = ₦ 892,454.93

GROUP 'C': Alhaja Hawau and Soliu Imam =₦ 1,786,179.25

1. Property 6: 3no Plots of land	=	₦ 750,000.00
2. Property 8: V. Boot Car	=	₦ 150,000.00
Total Received	**=**	**₦ 900,000.00**
Credit Balance	**=**	**₦ 886,179.25**

DISTRIBUTION OF THE ESTATE OF THE LATE SHEIKH (DR) MUHIDEEN SULAIMAN IMAM OMODELE
CASH DISTRIBUTION
WORKING PAPER 'A'

LIST OF HEIRS:

GROUP 'A'

1. Alhaja Aminat S. Omodele	=	(Mother)

GROUP 'B'

1. Alhaja Fatimoh Muhideen	=	(Wife)
2. Sheikh Saheed Muhideen	=	(Son)
3. Muhammed AWWAL Muhideen	=	(Son)
4. Aminat Muhideen	=	(Daughter)
5. Sofiyat Muhideen	=	(Daughter)
6. Aishat Muhideen	=	(Daughter)
7. Kaosarat Muhideen	=	(Daughter)
8. Mariam Muhideen	=	(Daughter)

GROUP 'C'

1. Alhaja Hawau Muhideen	=	(Wife)
2. Sheikh Soliu Muhideen	=	(Son)

WORKING PAPER 'B'

AVAILABLE CASH FOR DISTRIBUTION

An amount of Eight Hundred Thousand naira only (₦ 800,000.00) was received via the Unity Bank of Nigeria PLC.

I, commercial Road, Eleganza Plaza, Apapa Lagos State.

WORKING PAPER 'C'

FRACTIONAL SHARES OF CASH DISTRIBUTION

Total Cash	=	₦ 800,000.00
1/6 of 800,000.00	=	₦ 133,333.33 for the mother
1/8 of 800,000.00	=	100,000.00 for the 2 Wives
100,000.00 / 2	=	50,000.00 for the Wife

Balance = 566,666.67 for the 3 sons and 5 Daughter

3 Son =6

5 Daughter =5

11 Working Figure

i.e each Daughter will have 51,515.15 worth of the cash estate.

While each Son will have twice 103,030.30 worth of the cash estate.

SUMMARY

1. Wife	=	50,000.00 x 2	=	100,000.00
2. Mother	=	133,333.37 x 1	=	133,333.37
3. Son	=	103,030.30 x 3	=	309,090.91
4. Daughter	=	51,515.15 x 5	=	257,575.75
		Grand Total	=	**₦ 800,000.00**

CASH DISTRIBUTION OF ₦ 800,000.00

GROUP SUMMARY OF CASH DISTRIBUITION

GROUP 'A'	**ENTITLEMENT**	**SIGN**
Alhaja Aminat S. Omodele (Mother)	₦133, 333.37	**sgd**

GROUP 'B'

1. Alhaja Fatimoh Muhideen	(Wife)	**₦ 50,000.00**
2. Sheikh Saheed Muhideen	(Son)	₦103, 030.30
3. Muhammad Awwal Muhideen	(Son)	₦103, 030.30
4. Aminat Muhideen	(Daughter)	₦ 51,515.15
5. Sofiyat Muhideen	(Daughter)	₦ 51,515.15
6. Aishat Muhideen	(Daughter)	₦ 51,515.15
7. Kaosarat Muhidee	(Daughter)	₦ 51,515.15
8. Mariam Muhideen	(Daughter)	₦ 51,515.15

Total = N513, 636.35

GROUP 'C'

1. Alhaja Hawau Muhideen (Wife) ₦ 50,000.00
2. Sheikh Soliu Muhideen (Son) ₦ 103,030.30

Total = ₦ 153,030.30

CLOSING REMARKS:-

The panel directed the family to see themselves as one and not to allow the estate cause enmity among them.

CLOSING PRAYER:-

The meeting closed with prayer led by Hon. Kadi S. M. Abdul-Baki at 2.00 pm.

SGD	**SGD**
(Hon. Kadi A. A. Idris)	**(Yusuf M. Gbalasa)**
Officiating Minister	Secretary