

***Jurisdiction of Sharia Courts over Estate/Inheritance Matters under Section 277
of the Constitution***

In The Supreme Court of Nigeria
Holden at Abuja
On Friday, the 7th Day of June, 2024

Before Their Lordships

Uwani Musa Abba Aji
Chidiebere Nwaoma Uwa
Stephen Jonah Adah
Abubakar Sadiq Umar
Mohammed Baba Idris
Justices, Supreme Court

SC. 406/2017

Between

FAUZIYA ALI & ORS

APPELLANT

And

MANDU BASHIR MAIDUGURI

RESPONDENT

(Lead judgement delivered by Honourable Abubakar Sadiq Umar, JSC)

Facts

On 31st January 2011, the Respondent as Plaintiff filed an action before the Waje No.1 Shariah Court (“trial court”) in Suit No. CV/19/11 seeking to compel the 1st Appellant to release a portion of the Respondent’s father’s estate (Bashir Ali Bin Alua, who passed away in 1972), which the 1st Appellant allegedly held, so that it could be properly distributed among his heirs. The estate consisted of three plots of land on Ibrahim Taiwo Road, numbered G5, G6, and G7, inherited from the Respondent’s father. Counsel for the Respondent clarified that only plot G6, currently known as 50 Ibrahim Taiwo Road, was in dispute, as plots G5 and G7 were not contested. Counsel stated further that Bashir Ali, the Respondent’s father, inherited G6 with his three sisters—Aisha, Fatima, and Fauziyya (the Defendants at the trial court)—and divided the property equally among them.

He stated that the Respondent's father had left his share with Fauziyya, but the portion had never been returned to the Respondent, leading to the court action.

The trial court heard two witnesses and accepted their testimonies with regard to the Respondent's relationship to Bashir Ali Bin Alua, his father, and the fact of his demise.

Counsel for the Appellant admitted the narration of counsel for the Respondent but stated that *when the distribution took place, Bashir gave his portion of House No.50 to Fauziyya. When he said he left it for her, the Grand Alkali who conducted the distribution of the estate said Bashir had forfeited his portion of the share, which means Fauziyya has two portions.*

On 16th May, 2011 the trial court ruled *inter alia* that the 1st Appellant who claimed that the Respondent's father had made a gift of his portion of the distributed estate to her, should adduce evidence to establish the said gift. The Respondent, being dissatisfied with the said ruling, appealed to the Upper Sharia Court, Rijiyar Lemo. The Upper Sharia Court Rijiyar Lemo delivered its judgement on 4th July, 2011 where it directed the Sharia Court Waje No. 1 to cause a one page document titled 'Allocation of The Estate Of The Deceased IBN ALUA' (which the 1st Appellant relied upon as proof of the distribution of the estate by a court as well as proof for gift) to be translated into Hausa, so that if the document indicated that there was a gift, it would be a case that can be entertained by the State High Court and Waje Sharia Court No.1 would cease to have jurisdiction to entertain the matter. The Respondent also appealed this decision to the Sharia Court of Appeal, Kano State.

Before the appeal filed by the Appellant at the Sharia Court of Appeal, Kano State, against the judgement of Upper Sharia Court Rijiyar Lemo could be heard and determined, Sharia Court Waje No.1 concluded the matter before it and found that the document indicated gift and declined jurisdiction. The Respondent appealed to Upper Sharia Court Goron Dutse which affirmed the findings of Sharia Court Waje No.1 and the Respondent further appealed to the Sharia Court of Appeal, Kano State. The appeals against the judgements of Upper Sharia Court, Rijiyar Lemo and Upper Sharia Court, Goron Dutse were consolidated for hearing before the Sharia Court of Appeal. The Sharia Court of Appeal in its judgement delivered on 20th June 2012 faulted the judgements of the two Upper Sharia Courts and that of Sharia Court Waje No.1. It reversed the

judgements and ordered the 1st Appellant to give her nephew, the Respondent, his father's property.

The Appellants were dissatisfied with the judgment of the Sharia Court of Appeal, Kano State, and they appealed to the Court of Appeal, Kaduna Division. The Court of Appeal affirmed the judgment of the Sharia Court of Appeal, leading to the further appeal by the Appellants to the Supreme Court.

Issues for Determination

The apex court adopted two issues for determination of the appeal, to wit:

- 1. Whether the Court of Appeal was right in holding that the lower courts had jurisdiction to entertain the suit.*
- 2. Whether the Court of Appeal was right in holding that the order made by the Khadis on the return of unspecified portion claimed by the Respondent from the estate is not vague and ambiguous.*

Arguments

Arguing issue one, counsel for the Appellants reiterated the fundamental principles of jurisdiction and urged the court to hold that the trial court had no jurisdiction over the subject matter of the suit being title to land. Counsel referred to the directive given by the Upper Shariah Court, Rijiyar Lemo to the trial court with regard to the translation of the document tendered before the trial court into Hausa with the aim of determining if the word 'surrender' used therein means 'gift'. The trial court caused the translation to be made and it found that the word used meant gift. It thereby struck out the matter for lack of jurisdiction, since the dispute relates to title and pertained to land which is situate in an urban area. In furtherance of his arguments, counsel referred to Section 39 of the Land Use Act and contended that title was in dispute and the land, which is situate in an urban area, is covered by statutory right of occupancy granted by the Governor of the State and that the High Court is the only court with original jurisdiction in respect of proceedings concerning it. Counsel submitted that consequently, the Area Court had no jurisdiction in respect of the disputed landed property. The Respondent countered the submissions. He argued that it is the Plaintiff's claim that determines court's jurisdiction to entertain a particular matter, and the Respondent's claim before the trial court was for distribution of inheritance in House No. 50 Ibrahim Taiwo Road. Hence,

the contention that the Respondent's claim qualifies as a case of inheritance/succession under Islamic Law and it falls within the provision of Section 277 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

On issue two, counsel for the Appellant contended that courts are enjoined to refrain from making orders which either by their nebulous or opaque nature are likely to be misunderstood and become vain. Counsel contended that both the judgement of the Shariah Court of Appeal and the Court of Appeal did not describe the property and as such, the Appellants were in the dark as to what portion of the property the 1st Appellant is expected to return to the Respondent. He submitted further that the Khadis as well as the Justices of the lower court did not understand the issues involved between the parties and that under Islamic law, it is unlawful for a Judge to give judgement without understanding and appreciating the facts of the case before him. He referred to page 15 of *Ikhkamul Ahkaam* where the author stated that; it is not lawful for a Judge to pronounce judgement where he does not understand the issues involved therein. Conclusively, the court was urged to resolve this issue in favor of the Appellants. Reacting to the submissions, counsel for the respondent posited that since the Respondent's claim was specific i.e. the order for the return of the property being the portion in House No. 50 Ibrahim Taiwo Road, Kano which the 1st Appellant emphatically claimed had been given to her as a gift by the Respondent's father, the Order made by the Khadis directing the 1st Appellant to return a portion claimed by the Respondent could not be vague or ambiguous.

Court's Judgement and Rationale

Determining the first issue, the apex court emphasized the importance of jurisdiction and held that without it, every step taken in the case amounts to a nullity, no matter how well conducted and no matter how erudite the decision emanating therefrom. Their Lordships held that *the jurisdiction of the Sharia Court of Appeal (and by implication/extension, the Sharia Courts) under Section 277 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), pertains to all questions of what is termed 'Islamic personal law'.* The court cited the case of *GWABRO v GWABRO (1998) 4 NWLR (PT. 544) 60 at 68 – 69*, which outlines the types of disputes that can be subject to succession proceedings under Section 277 of the 1999 Constitution, which included *"a dispute over any heritable estate which any person withholds away from the heirs"*

Consequently, the court held that *since the Respondent's claim relates to a share of inheritance which was allegedly withheld from the Respondent by the 1st Appellant, it was clear that the Respondent's claim comes within the meaning of "a dispute over any heritable estate which any person withholds away from the heirs", and within the ambit of Section 277 (2) (c) of the 1999 Constitution as amended.*

The Supreme Court therefore held that the lower courts had jurisdiction to entertain and determine the matter and resolved issue one in favour of the Respondent.

On the second issue, the apex court noted that on 29th April, 2011 the trial judge visited the *locus in quo* – House G6 – 50 Ibrahim Taiwo Road, Kano which was the subject matter of the case and made a report of the visit being that *"The house from the West is facing the East and has its boundary with the West Road, South Road, Road North. The portions of Fatima and Aisha has been demolished and 40 shops were built small and big facing one another. In Southern and Northern part from the back there are some 4 flats upstairs and downstairs."* The court also noted that on 11th May 2011, the trial court asked parties if the inspected property was what the parties were claiming and both parties answered in the affirmative.

From the foregoing, the court noted parties were *ad idem* on the point that Bashir Bin Alua the Respondent's father was apportioned $\frac{1}{4}$ (one quarter) of the estate described as G6 which is now known as 50 Ibrahim Taiwo Road, Kano. Their Lordships held that, although under Islamic law the statement of parties made in court are not regarded as evidence, however, the story is different in the instant case, because facts were admitted.

The court proceeded to explain that in Islamic law, *Iqrar* 'admission' is regarded as one of the means of proving a claim; it is duly recognized under Islamic law as judicial proof. Also, in **Bidayatul Mujtahid Vol. II page 352**, it is stated that: *'Where an admission (its wording and context) is clear, it is binding on the court to act upon it.'*

The court then held that *since parties agreed on the point that $\frac{1}{4}$ (one quarter) of G.6 – 50 Ibrahim Taiwo Road, Kano was apportioned to Bashir Ibn Alua and which said apportionment transformed into heritable estate in favour of the Respondent and the deceased mother of Bashir, the order on the portion to be delineated was specific enough and properly identifiable; the order was neither vague nor ambiguous.*

On the totality of the foregoing, the Supreme Court affirmed the judgement of the Court of Appeal, Kaduna Division which confirmed the decision of the Shariah Court of Appeal, Kano State.

Appeal dismissed.

Representation:

K. Maude Esq., for the Appellants

Prof. Mamman Lawan, SAN with W.Y. Mamman Esq., and Hajara Halilu for the Respondent.

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