

***Haruna Haruna & Anr vs. Suleiman & Attorney General Zamfara State (2014), Vol. 2,  
SQLR Part IV, pp. 521-542***

[Ed. note: issue decided: Whether sharia states could by statute expand the jurisdiction of their Sharia Courts of Appeal, beyond questions of Islamic personal law only, to all questions decided in their Sharia Courts under Islamic law. Holding: they could not.]

IN THE COURT OF APPEAL  
SOKOTO JUDICIAL DIVISION  
HOLDEN AT SOKOTO

On Friday, the 18<sup>th</sup> Day of July, 2014

Before Their Lordships

Hon. Justice Ahmad O. Belgore  
Hon. Justice Tunde O. Awotoye  
Hon. Justice M.L. Shuaibu  
Court of Appeal

Justice, Court of Appeal  
Justice, Court of Appeal  
Justice,

Appeal No. CA/S/8<sup>s</sup>/2011

Between:

1. Alhaji Aminu Haruna }  
2. Alhaji Yusuf Dan Hausa }

Appellants

vs

1. Umar Suleiman }  
Respondents }  
2. Attorney General Zamfara State }

JUDGMENT

(Delivered by Hon. Justice Ahmad O. Belgore, JCA)

This is an appeal against the decision of Sharia Court of Appeal of Zamfara State in Appeal No. SCA/GUS/H/19/07 delivered on the 22<sup>nd</sup> February, 2008 in which the Sharia Court of Appeal allowed the appeal of the 1<sup>st</sup> respondent against the judgment of Upper Sharia Court 1, Gusau in Case No. CR/112/2003 delivered on 8<sup>th</sup> September, 2004.

The 1<sup>st</sup> respondent was charged before the trial court for offences of criminal misappropriation and breach of trust contrary to sections 161 and 176 of Zamfara State Sharia Penal Code respectively. The trial court, based on the confession made before it, found the 1<sup>st</sup> respondent guilty and accordingly sentenced him to two years imprisonment with option of a fine of Ten Thousand Naira. And an order of restitution was made in favour of the 1<sup>st</sup> appellant.

Consequently, a landed property belonging to the 1<sup>st</sup> respondent situated at Kaduna was auctioned and sold to the 2<sup>nd</sup> appellant. ...

Thereafter the 1<sup>st</sup> respondent approached the Sharia Court of Appeal, Zamfara State. The appeal was entered between the 1<sup>st</sup> respondent as the appellant and the 2<sup>nd</sup> respondent as the respondent therein. After hearing the parties, in its judgment delivered on 22/02/2008, the court below allowed the appeal and quashed the decision of the trial court. The court below further ordered that the certificate of occupancy in respect of the auctioned property be returned to the 1<sup>st</sup> respondent and fresh matter be instituted in Kaduna.

The 1<sup>st</sup> appellant, unhappy with the judgment of the court below, filed, on 31/03/2008, a motion on notice at the court below seeking to be joined as a 2<sup>nd</sup> respondent. He further prayed the court below to set aside its judgment delivered on the 22/02/2008 for want of jurisdiction. On 10/06/2009 the court below struck out the 1<sup>st</sup> appellant's motion.

The appellants came to this court via a motion on notice filed on 16/07/2009 seeking extension of time within which to seek leave to appeal; leave to appeal; and extension of time to appeal. This court on 19/10/2009 granted the prayers. The appellants filed on 28/10/2009 their notice of appeal which contained three grounds of appeal. Briefs of argument have been filed and exchanged on behalf of the parties. ...

The issues for determination as identified by the learned counsel for the appellants ... are as follows:

1. "Whether the Sharia Court of Appeal has jurisdiction to entertain an appeal outside the contemplation of section 277 of the 1999 Constitution.
2. Whether having regard to the facts and circumstances, it was proper the Sharia Court (sic), Zamfara State to have proceeded with hearing of the appeal in the absence of the appellants."

On issue No. 1, the learned counsel for the appellants submitted that the jurisdiction of the court below is limited within the sphere provided under section 277 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). Thus the court below has no power to entertain criminal appeals. He cited *Abuja vs. Bizji* (1980) NWLR (Pt. 119) 120 at 125 and *Ibrahim vs Fulani* (2003) 18 WRN 40 at 80-81 and other cases. He urged the court to resolve this issue in favour of the appellants.

On issue No. 2, the learned counsel for the appellants submitted that the court below erred in law when it reached its decision without giving the appellants, whose rights are directly affected by the decision, opportunity to be heard as such denying them right of fair hearing which rendered the decision a nullity...

Learned counsel for the 1<sup>st</sup> respondent formulated two issues...that are substantially the same with that formulated by the appellants' counsel. In arguing the issues, he conceded to the submission of the learned counsel for the appellants on the first issue while he contended, on the second issue, that the lower court, going by section 211 of the 1999 Constitution... was right to have proceeded to hear the appeal in the absence of the appellants. ...

The learned counsel for the 2<sup>nd</sup> respondent...formulated two issues for determination; though differently worded, the issues are the same as those formulated by the...appellants....

On issue No. 1, the learned counsel submitted that going by the provisions of sections 275(1) and 277(1) of the 1999 Constitution..., a state may confer additional appellate jurisdiction on its Sharia Court of Appeal. He further submitted that sections 42 and 43 of Zamfara State Sharia Court Establishment Law No. 5 are consistent with the 1999 Constitution. As such the Sharia Court of Appeal of Zamfara State has power to hear and

determine criminal appeals from Upper Sharia Courts of the State. He urged the court to so hold and resolve this issue in favour of the respondents.

On issue No. 2 the learned counsel argued that it was not established, from the records of the proceedings, that the appellants had sought and obtained leave to be joined as parties in the appeal before the lower court. He submitted that for a party to be joined in a matter before a court, leave of the court must be sought and obtained and court cannot *suo moto* join the parties....

I will determine this appeal based on Issue One....

Attention must be drawn to the fact that this appeal stemmed from criminal proceedings before the two courts below. The appellant is now challenging the jurisdiction of the Sharia Court of Appeal to entertain an appeal from the Upper Sharia Court in respect of a criminal matter, i.e. an offence of criminal breach of trust contrary to Section 65 of the Zamfara State Sharia Penal Code.

The Sharia Court of Appeal, Zamfara State, derives its jurisdiction from, and is created by the Constitution of the Federal Republic of Nigeria, 1999, as amended (now "The Constitution"). Subsection (1) of Section 277. [sic] Section 277(1) and (2) of the Constitution provide as follows: -

277. (1) 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.

(2) For the purposes of subsection (1) of this section, the Sharia Court of Appeal shall be competent to decide:

- a. any question of Islamic personal Law regarding a marriage concluded in accordance with that Law, including a question relating to the validity or dissolution of such a marriage or a question that depends on such a marriage and relating to family relationship or the guardianship of an infant;
- b. where all the parties to the proceedings are Muslims, any question of Islamic personal Law regarding a marriage, including the validity or dissolution of that marriage, or regarding family relationship, a founding or the guarding of an infant;
- c. any question of Islamic personal Law regarding a *wakf*, gift, will or succession where the endower, donor, testator or deceased person is a Muslim;
- d. any question of Islamic personal Law regarding an infant, prodigal or person of unsound mind who is a Muslim or the maintenance or the guardianship of a Muslim who is physically or mentally infirm; or
- e. where all the parties to the proceedings, being Muslims, have requested the court that hears the case in the first instance to determine that case in accordance with Islamic personal law, any other question.

Subsection (1) has limited the jurisdiction of the Sharia Court of Appeal of a State to **Civil Proceedings** and to any questions involving Islamic Personal Law. What constitute Islamic Personal Law in civil proceedings are listed in Subsection (2) of Section 277.... Any matter outside civil proceedings is not within the jurisdiction of the Sharia Court of Appeal. Apart from that, the Sharia Court of Appeal will only be competent to assume jurisdiction in any civil proceeding if it involves questions of Islamic Personal Law. See *Faransi vs. Noma* (2007 10 NWLR (Pt. 104).

The learned Attorney-General for the 2<sup>nd</sup> Respondent has forcefully submitted that Subsection (1) of Section 277...empowers or enables a State Legislature to confer additional appellate and supervisory jurisdiction on the Sharia Court of Appeal, independent of or outside Islamic Personal Law. With respect to the learned Attorney, that cannot be. The provisions of Section 277(1) and (2) are very clear and unambiguous to admit of any meaning other than the ordinary one being ascribed to them. Anything outside civil proceedings involving questions of Islamic Personal law will be inconsistent with the constitutional provisions and will be void. The learned Attorney has copiously referred to Sections 42 and 43 of the Zamfara State Sharia Courts (Establishment) Law, 1999, in submitting that it is mandatory for all appeals from the Upper Sharia courts (both civil and criminal) to be lodged at the Sharia Court of Appeal. I do not see how this law derived its blood and flesh from the true intent of the opening wordings of Section 277(1) of the Constitution as submitted by the learned Attorney. I do not agree that the word "other" as used in Subsection (1) has created a dissimilarity. Rather the word is used to allow similar jurisdiction to be created and conferred on the Sharia Court of Appeal. I am fortified in this interpretation by the provisions of Subsection (2) which lists the extent of the competency of the Sharia Court of Appeal. This is a pure case of **Ejusdem Generis**.

[phrase written in Arabic]

*"Birds of the same feather flock together"*

Sections 42 and 43 of the Sharia Courts (Establishment) Law, 1999 of Zamfara State provide thus: -

42. Appeals shall lie from the decisions or orders of the Upper Sharia Court sitting in its original or appellate jurisdiction in all civil or criminal proceedings to the Sharia Court of Appeal of the State.

43. The Sharia Court of Appeal shall have the jurisdiction and power to hear and determine all appeals from the decisions or orders of an Upper Sharia Court sitting in its original or appellate jurisdiction in all civil or criminal proceedings as provided for in this Law.

It is apparent from the above quoted provisions...that the Law does not stop at making an expanded provisions for the jurisdiction of the Sharia Court of Appeal with regard to civil proceedings; it goes on to confer on the court criminal jurisdiction which the Constitution has not provided for. I said "expanded provisions for the jurisdiction of the Sharia Court of Appeal with regard to civil proceedings." This expression is used advisedly and deliberately because the law talks of **"In all Civil...Proceedings"**. It should be noted that not all civil proceedings in the Upper Sharia Courts involve questions of Islamic Personal Law. A good number of civil proceedings in the Upper Sharia Courts involve questions of Islamic Law simpliciter, other than Islamic Personal Law. For instance questions involving Shuf'a; Rahan; Musharaka; etc. are matters of civil proceedings within the scope of Islamic Law but they do not involve questions of Islamic Personal Law.

The second limb of this provision confers on the Sharia Court of Appeal, jurisdiction **"In all Criminal Proceedings"**. This has taken the jurisdiction of the Sharia Court of Appeal outside the realm of Section 277(1) and (2) of the Constitution. The effect of these two Sections of the Zamfara State Sharia Courts (Establishment) Law 1999 is to amend the provision of the Constitution. This is clearly ultra vires the Zamfara State House of Assembly.

You do not give to people what you do not have. The Law in *Nafiu Rabiu vs. State* (1980) 8-11 SC 130, Per Sir Udo Udoma, JSC is still the law but liberal interpolation is not meant to create an absurdity. Any meaning other than the one I have placed on the provisions of these two Sections will certainly lead to absurdity.

It is in the light of the foregoing that I hold that the provisions of Sections 42 and 43 of the Zamfara State Sharia Courts (Establishment) Law 1999 are inconsistent with the provisions of Section 277(1) and (2) of the Constitution. Similar provisions in Section 17 of the Sokoto State Sharia Courts Law, 2000 were held by this court to be inconsistent with the provisions of Section 277(1) and (2) of the Constitution in the case of *Kanawa vs. Maikaset* (2007 10 NWLR (Pt. 1042). In that case, the Sokoto law was held to be null and void to the extent of its inconsistency with the Constitution.

I have no choice in this matter other than to hold that the Zamfara State Sharia Courts (Establishment) Law 1999 is null and void to the extent of its inconsistency with the Constitution, and I so hold. See also *Mallam Ado & Anor vs. Hajija Dije* (1984) 5 NCLR 260, 267.

I hold that the Zamfara State Sharia Court of Appeal lacks the jurisdiction and competency to entertain this appeal in Suit No. SCA/GUS/H/19/2007 involving questions other than those of Islamic Personal Law and in criminal proceedings outside the provisions of Section 277(1) and (2) of the Constitution.

This appeal succeeds and it is hereby allowed on the issue of jurisdiction. I see no need to consider any of the other issues remaining in this appeal.

No cost is awarded.

(signed)

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Hon. Justice Ahmad O. Belgore  
Justice, Court of Appeal

I had the opportunity of reading before now the draft of the judgment just delivered by my brother Ahmad O. Belgore JCA. I am in total agreement with the reasoning and conclusion therein. I also abide by all consequential orders made in the judgment.

(signed)

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Hon. Tunde O. Awotoye  
Justice, Court of Appeal

I have had the privilege of reading in draft the judgment of my learned brother Ahmad O. Belgore and I entirely agree that Sections 42 and 43 of the Zamfara State Sharia Courts (Establishment) Law No. 5, 1999 are inconsistent with Section 277(1) and (2) of the 1999 Constitution which is the organic and fundamental law of the land. Being inconsistent with the provisions of Section 277(1) and (2) of the Constitution, the said Sections 42 and 43 of the Zamfara State Sharia Courts (Establishment) Law No. 5 of 1999 are liable to be set aside.

For the same reasons articulated in the lead Judgment, I also find merit in this appeal.

(signed)

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Hon. M.L. Shuaibu  
Justice, Court of Appeal

