



THE JUDICIAL MACHINERY FOR  
ADMINISTRATION OF ISLAMIC LAW IN  
NORTHERN NIGERIA WITH PARTICULAR  
REFERENCE TO KWARA AND KADUNA  
STATES

BY

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A thesis submitted in fulfilment of the requirement for  
the degree of Doctor of Philosophy (Law)

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DECEMBER 2012

## **ABSTRACT**

This study examines the judicial machinery (courts and judges) in the administration of Islamic Law in Northern Nigeria. Although there are Islamic courts (Area Courts, Sharia Courts, and the Sharia Court of Appeal) in Northern Nigeria, common law courts play a dominant role in the administration of Islamic law. The study adopts both library and field research in obtaining data to support the argument. Primary sources including the past and present Nigerian Constitutions, statutes, case law and official records are heavily relied upon in providing legal framework. Additional supporting data was obtained through unstructured interviews and through direct observation of the courts in session. The study establishes many discrepancies in the administration of Islamic law in Northern Nigeria due to many factors largely attributed to interference by the civil courts in Islamic law matters and lack of expertise in Islamic law. This is evident that successive legislative attempts to exclude the jurisdiction of the High Court in Islamic law matters and to confer exclusive jurisdiction these matters on the Sharia Court of Appeal have failed. Appeals from the High Court and the Sharia Court of Appeal go to the Court of Appeal and finally end at the Supreme Court. The study also reveals that statutory rules on court practice and procedure that are based on the common law apply to Islamic cases. In many states, lawyers having the combined common law and Islamic law degree are now preferred over graduates of Faculties of Sharī'ah for appointment as judges of Area Courts and as Kadis of the Sharia Court of Appeal. The study argues that Islamic law matters should be within the exclusive jurisdiction of Islamic courts operated by judges and lawyers who are learned in Islamic law.

## ملخص البحث

هذه الدراسة بفحص الجهاز القضائي (المحاكم والقضاة) في إدارة الشريعة الإسلامية في شمال نيجيريا. بالرغم من وجود المحاكم الشرعية (المحاكم المنطقة، المحاكم الشرعية، والمحكمة الشرعية الاستئناف) في شمال نيجيريا، محاكم القانون العام تلعب دورا مهما في مجال إقامة الشريعة الإسلامية. وتعتمد الدراسة على حد سواء المكتبة والبحث الميداني في الحصول على البيانات لدعم حجة. يتم الاعتماد بشكل كبير بما في ذلك المصادر الأولية الدساتير النيجيري في الماضي والحاضر والأنظمة والسوابق القضائية والوثائق الرسمية عليها في توفير الإطار القانوني. تم الحصول على بيانات إضافية من خلال المقابلات غير منظم دعم والملاحظة المباشرة من خلال المحاكم في الدورة. دراسة تحدد تناقضات كثيرة في إدارة الشريعة الإسلامية في شمال نيجيريا بسبب العديد من العوامل يعزى إلى حد كبير إلى التدخل من قبل المحاكم المدنية في المسائل الشرعية الإسلامية وعدم وجود الخبرة في الشريعة الإسلامية. هذا هو واضح أن محاولات التشريعية المتعاقبة لاستبعاد اختصاص المحكمة العليا في المسائل الشرعية الإسلامية ومنح الاختصاص الحصري هذه المسائل على المحكمة الشرعية الاستئناف قد باءت بالفشل. الاستئناف من المحكمة العليا ومحكمة الاستئناف الشرعية تذهب إلى محكمة الاستئناف وتنتهي أخيرا في المحكمة العليا. وتكشف الدراسة أيضا أن القواعد القانونية على ممارسات المحاكم والإجراءات التي تستند إلى القانون العام تنطبق على الحالات الإسلامي. في كثير من الدول، ويفضل وجود المحامين الآن القانون مجتمعة المشتركة والإسلامية على شهادة في القانون من خريجي كليات الشريعة آه<sup>٥</sup> للتعين كقضاة المحاكم والمنطقة وقديس من المحكمة الشرعية الاستئناف. دراسة تقول أن الأمور يجب أن تكون الشريعة الإسلامية ضمن الاختصاص الحصري للمحاكم الإسلامية التي تديرها القضاة والمحامين الذين تعلموا في الشريعة الإسلامية.

## **APPROVAL PAGE**

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## DECLARATION

I hereby declare that this thesis is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

Abdulmumini Adebayo Oba

Signature .....

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LAW IN NORTHERN NIGERIA WITH PARTICULAR REFERENCE TO  
KWARA AND KADUNA STATES**

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*Dedicated to the memory of my parents - Alhaja Humuani Oba and Alhaji Abdul  
Kadiri Oba OFR. Oh Allah! By Your Mercy, reward them with the highest paradise.  
Āmīn.*

## ACKNOWLEDGEMENTS

All Praise is to Allah SWT. In the course of this study, I am indebted to far too many persons than the space here will allow me to acknowledge. I can only mention a few:

In Ahmad Ibrahim Kulliyah of Laws (AIKOL), my supervisor, Assoc. Professor Kharil Azmin Mokhtar, Deputy Dean (Postgraduate), and co-supervisor, Asst. Professor Dr. Tajul Aris Ahmad Bustami who in spite of their very busy schedule always accommodated my requests for audience with them. They met me on most occasions at my convenience rather than at their conveniences and when the going got tough for me, offered constant encouragement and kind prayers; my thesis advisor, Assoc. Professor Dr. Shamurahayu Abdul Aziz whose sharp and brilliant mind and caring personality helped me through the confusion of writing the proposal for this thesis; Professor Zaleha Kammarudeen whose lectures in the Research Methodology class opened many intellectual vistas. The journey through AIKOL and IIUM was made much smoother by the pleasant administrative team of the Kulliyah, in particular, Sisters Juhaniss and Zuraila in the Postgraduate office.

The President, Court of Appeal, the Grand Kadi, Kadis and staff of the registries of the Sharia Court of Appeal, Ilorin and Kaduna respectively, and the staff of the High Court Registry, Ilorin who provided assistance in the course of this research.

Friends and colleagues at the University of Ilorin - my teacher Professor Abdul Qadir Zubair from whose deep knowledge of Islamic law and whose personal component (*adāb*) I have learnt a lot; Dr. Ismael Saka Ismael, whose care and personal sacrifices spared me much time to enable me concentrate on my studies and whose discussions as a successful practising lawyer brought many cases to my attention; and Dr Adedoyin Raji (my Head of Department) for being true when powerful forces demanded otherwise.

My friends and at various times, colleagues at AIKOL - Dr Umar Oseni - for years of intellectual companionship and faithful friendship, Dr. Ibrahim Adams, Dr. Abdulazeez Yusuf, Dr. Ibrahim Yusuf, Dr. Lukman Ayinla, and Dr. Bashir Omipidan who provided encouragement at various times.

My siblings: Alhaji Issa Babatunde Oba - the *Magaji* (Family head), Hajia Lateefat, Hajia Maryam, Alhaji Ahmed, Zakariyyah, Hajia Abibat, Hajia Seliat and Risikat gave much support. My wife Muslimat, and children - Humuani, Musa Modibbo, Rahmatullah, and Ahmad Saefullahi - who endured my long absences from home and did their best to cheer me up throughout the duration of the study.

Finally, countless well-wishers (Bro. Muttalib Sekoni, Mallam Issa Ibrahim, Alhaji AbdelRasaq, Alhaji Y. K. Saadu, Alhaji Ahmad Alege and others) who openly and in private supported me with their prayers.

To you all, I say: *JAZAKUMULAHU KHAYRAN*. May Allah (SWT) reward you abundantly. *Alḥamdu lillahi rabbi li alamīn*.



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## LIST OF ABBREVIATIONS

C.A.	Court of Appeal Judgements
F. N. R.	Federation of Nigeria Law Reports
F.N.L.R.	Federation of Nigeria Law Report
N.C.L.R.	Nigerian Criminal Law Reports
N.S.C.C.	Nigerian Supreme Court Cases
N.R.N.L.R.	Northern Region of Nigeria Law Report
N.N.L.R.	Northern Nigerian Law Report
N.W.L.R.	Nigerian Weekly Law Report
ShLR	Shariah Law Report
Sh. L. R. N.	Sharia Law Reports of Nigeria
S.L.R. (CILS)	Sharia Law Reports, Centre for Islamic Legal Studies
S.L.R.	Sarauniya Law Reports
S.C.N.J.	Supreme Court of Nigeria Judgments

# CHAPTER ONE

## INTRODUCTION

### 1.1 GENERAL INTRODUCTION

Islamic law used to be the dominant law, which was enforced by highly competent *alkalis*<sup>1</sup> (judges) as State law for centuries in the northern part of the country until the area fell under European colonisation. In the southern part of the country, although Islam was widely practised in the southwest, Islamic law was not entrenched and enforced by the state except in a few isolated instances.

The British colonialists created northern Nigeria out of the area under the Sokoto and Kanem Bornu Caliphates respectively. Today, 19 states have been created out of the defunct northern region.<sup>2</sup> In the pre-colonial era, Islamic law was the dominant and official law in the Sokoto and Kanem Bornu caliphates. The advent of British colonialism in the middle of the 19<sup>th</sup> Century brought many fundamental changes to the pre-colonial system in northern Nigeria. Although the British adopted a policy of indirect rule, which preserved among other things the existing administrative machinery and the flourishing Islamic judicial system under the Emirs, they also brought not only their system of administration but also their laws together with their legal system, its methodology and its methods of administration of justice. The Common law, which evolved in England, became the dominant legal system in the country as the courts were enjoined by statute to apply the common law. The common law and its courts gradually displaced the other laws and courts. Although

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<sup>1</sup> *Alkali* is the Hausa version of the Arabic *al-Qāḍī* (judge).

<sup>2</sup> These are Adamawa, Bauchi, Benue, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Nassarawa, Niger, Plateau, Sokoto, Taraba, Yobe and Zamfara States.

the Emirs continued to hold their courts, they lost to the British the control of the Islamic courts system. The British modified the administrative machinery and the substantive laws of the pre-colonial Islamic judicial system in a number of ways including that they took control of the administration of the courts in terms of appointment and discipline of judges and even supervision of the courts. They also controlled the substantive aspects of Islamic law by equating Islamic law with customary law, which is required to pass some validity tests before it can be enforceable in the courts. These tests include the repugnancy test, which demands that these laws must not be repugnant to natural justice, equity and good conscience. They also introduced conflict of laws rules, which are skewed in favour of applying common law on Muslims.<sup>3</sup>

The British granted independence to Nigeria in 1960. The post-colonial era witnessed further encroachment of common law personnel, courts and principles into the Islamic law terrain. Between 1960 and 1979, the jurisdiction of the Sharia Court of Appeal was limited only to appeals from the Area Courts in matters relating to Islamic personal law while the appellate jurisdiction on all other aspects of Islamic law was conferred on the High Court (a common law court) even though both are courts of coordinate jurisdiction. However, it was required that the High Court must include a Kadi of the Sharia Court of Appeal in its panels when it exercises its appellate jurisdiction on Islamic law matters. There was no appellate court for Islamic

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<sup>3</sup> See generally Muhammad Tabiu and S. Khalid Rashid, "The Administration of Islamic Law in Nigeria" *International and Comparative Law Quarterly* Vol. 6 No. 1 (1986): 27-49, Awwalu Hamisu Yadudu, "We need a New Legal System" in *On the Future of Nigeria*, edited by Ibrahim Suleiman and Siraj Abdulkarim (Zaria: Hudahuda Publishing, 1988), 2-7, Awwalu Hamisu Yadudu, "Colonialism and the Transformation of Islamic law in the Northern States" *Journal of Legal Pluralism* Vol. 32 (1992): 103, A. H. Yadudu, "Impact of Colonialism on Islamic Law and Its Administration in Nigeria" *Islamic and Comparative Law Review*, Vol. 12 No. 2 (1993): 145-153, and M. Tabiu, "Comparative Laws: Nature and Scope of Application of English Law, Customary Law and Islamic Law" in 1997 *All Nigeria Judges Conference Papers, Abuja* (Lagos: MIJ Professional, 1997).

personal law cases beyond the Sharia Court of Appeal while appeals in other Islamic matters from the High Court went to the Supreme Court.

The 1979 Constitution came into force after 13 years of military rule. It was Nigeria's first autochthonous constitution. This Constitution, despite strong protests from Muslims, introduced several revolutionary changes, which aided the encroachment of the common law, its courts and its personnel into the administration of Islamic law in the country. Firstly, the constitution did not provide for Kadis to sit in the High Court for any purpose.<sup>4</sup> Secondly, the Supreme Court which is essentially a common law court manned by judges who are trained in the common law gained control of all aspects of Islamic law by becoming the final appellate court for Islamic personal law matters. With this development, the justices of the Supreme Court effectively became the highest Shariah judges for the country whereas from the Islamic law perspective they are not qualified for this post. Thirdly, by judicial interpretations of the 1979 Constitution in 1982 and 1985 respectively, common law-trained lawyers<sup>5</sup> gained a right of audience in Islamic courts at the superior and subordinate courts levels in both criminal and civil cases even though their academic education and professional training does not always include Islamic law.<sup>6</sup> The academic and professional legal education in the country is still tilted towards producing lawyers learned only in the common law tradition. Lastly, the 1979 Constitution introduced many provisions to insulate the judiciary from the control of the Executive by giving the judges and legal practitioners the control of the administrative and controlling organs of the judiciary. Judges and legal practitioners also control the relevant organs controlling the legal profession. However, common

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<sup>4</sup> *Ado v Dije* (1983) 2 F. N. R. 213.

<sup>5</sup> They are called "legal practitioners" in the country.

<sup>6</sup> *Uzodinma v Police* (1982) 3 NCLR 325 (in criminal cases) and *Karimatu v Paiko* (1961-1989) 1 Sh. L. R. N. 126 (in civil cases).

law judges and legal practitioners also dominate the memberships of these organs while Islamic law judges have very little and sometimes no representation at all in these bodies.

Between 1984 and 1999, there was a succession of military regimes. Several legislative attempts during this period to extend the jurisdiction of the Sharia Court of Appeal beyond the confines of Islamic personal law were declared unconstitutional by common law courts. The current 1999 Constitution that ended Military rule affirmed all the changes brought by the 1979 Constitution discussed above. In addition, under the 1999 Constitution, persons who also have common law qualifications became for the first time eligible for appointment as Kadis of the Sharia Court of Appeal. Hitherto, only Islamic law and related qualifications were solely required. With this development, persons with Islamic law qualifications exclusively are now disadvantaged in appointments as Kadi as there is an emerging trend and preference for persons who also have common law qualifications.

The jurisdiction of common law courts on Islamic law matters and the intrusion of common law judges and legal practitioners into Islamic courts have opened the floodgate of attempts to introduce common law principles, practice, and procedure into the Islamic courts. Again, since the interpretation of the constitution and statutes is within the exclusive jurisdiction of common law courts, matters of conflict between Islamic courts and common law courts have generally been resolved against Islamic courts.

What has emerged from the above is not only a scenario of jurisdictional conflicts between Islamic courts and common law courts in northern Nigeria but also incongruities in the jurisdictions of these courts in matters of Islamic law. There is also a steady encroachment of common law principles into the administration of