



THE JURISDICTION OF SHARI'AH COURTS IN THE
APPLICATION OF ISLAMIC PENAL LAW: A STUDY
IN KATSINA STATE OF NIGERIA

BY

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degree of Master of Comparative Laws

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ABSTRACT

This dissertation examines the jurisdiction of Shari'ah Courts of Katsina State of Nigeria as regards to the application of Islamic Penal law alongside with the jurisdiction of the civil courts in the State. Technically, the jurisdiction of a court is the actual authority that is vested in a Court for the exercising of judicial power in a particular case. The authority is customarily conferred on a court by the Statute that establishes such Court. The Shari'a Courts in Katsina State of Nigeria are established pursuant to the law by the Katsina State Legislature within the power that is conferred on it by the Constitution of the Federal Republic of Nigeria. The research also analyses the overlapping of jurisdiction between the Shari'a Courts and other civil Courts, which further resulted in uncertainty as to which of the Courts' jurisdiction that Muslims of Katsina State are really subjected to. The methodology used in this research is a doctrinal legal analysis in which materials gathered from the library and the registry of some Courts in Katsina State is analysed. The research finds that, the penal jurisdiction conferred on the Shari'a Courts in Katsina State is more in the legislative pronouncement than actual exercise of the jurisdiction by the Courts. In consequence, the research finds that other provisions in the Nigerian Constitution and some legislation by the Katsina State legislature in respect of the jurisdiction of civil Courts are overlapping with the penal jurisdiction of Shari'a Courts in the State. It also finds that Muslims in Katsina State are denied the certainty of jurisdiction and laws to be applied on them in criminal proceedings despite the glaring provisions that render all Muslims subject of the jurisdiction of the Shari'a Courts and in accordance with the Shari'a Penal Code of Katsina State. The research then recommends for the amendment and or repeal of some provisions to ensure harmonious coexistence between the Shari'a Courts and civil Courts for the smooth dispensation of criminal justice in Katsina State.

ملخص البحث

يهدف هذا البحث إلى دراسة اختصاص سلطة المحاكم الشرعية في ولاية كاتسينا النيجيرية فيما يخص تطبيق قانون العقوبات الإسلامي (الحدود) فيها، وذلك بجانب اختصاص المحاكم المدنية التي تتواجد معها في تلك الولاية. واختصاص المحكمة يعني السلطة القضائية الفعلية التي يتم منحها لمحكمة معينة لممارسة القضاء في قضايا معينة. وعادة، ما يمنح هذا الاختصاص للمحكمة بموجب النظام القانوني الذي تأسست عليه المحكمة. ولقد تم تأسيس المحاكم الشرعية في ولاية كاتسينا النيجيرية من قبل المجلس التشريعي (البرلمان) في الولاية. وذلك طبقاً للسلطة المخولة للمجلس بموجب دستور الجمهورية النيجيرية الفدرالية. ولقد قام الباحث ببيان وتحليل التداخل الجلي بين اختصاص المحاكم الشرعية والمحاكم المدنية مما أدى إلى عدم معرفة الجهة التي على المسلمين التوجه إليها. ولقد تبني الباحث المنهج التحليلي المبادئ القانونية، المواد و المعلومات التي تم جمعها من المكتبة ومن بعض محاكم ولاية كاتسينا. وتفصل الباحث إلى نطاق اختصاص الجزائية التي تم منحها بالنطق التشريعي للمحاكم الشرعية في ولاية كاتسينا أوسع من نطاق ممارستها الفعلية حالياً. كما توصل إلى أن بعض المواد في الدستور النيجيري وبعض تشريعات المجلس التشريعي في ولاية كاتسينا فيما يخص اختصاص المحاكم المدنية تتداخل مع الاختصاص الجزائية في المحاكم الشرعية أن مسلمي ولاية كاتسينا قد حُرِّموا من حق معرفة الاختصاص القانوني الذي كانوا تحت سلطته فيما يخص الإجراءات الجنائية، وذلك رغم وجود القوانين التي تجعل المسلمين تحت اختصاص المحاكم الشرعية، ووفقاً لنص قانون الجنائية الشرعية في ولاية كاتسينا. وأخيراً، يوصي الباحث بضرورة تعديل أو إلغاء بعض القوانين أو المواد القانونية لتحقيق التواجد المنسجم بين المحاكم الشرعية والمحاكم المدنية في هذه الولاية ولإقامة مبدأ العدالة الجنائية المناسبة فيها.

APPROVAL PAGE

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DECLARATION

I hereby declare that this thesis is the result of my own investigation, 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.

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Dedicated to my Father, Imam Abba Muhammad Aliyu OON, for everything;

And

To the living memory of my beloved Mother late Hajiya Husaina (Abba) Yakubu

Abdulbaqi

May Allah (SWT) grant mercy and Aljannah for them, Amin.

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LIST OF ABBREVIATIONS

AC	Appeal Court /Appeal Case
AD	(<i>anno Domini</i>) in the year of our Lord
AG	Attorney-General
AH	After <i>Hijrah</i> (the migration of Prophet (PBUH) to Medina)
Anor	Another
CAP	Chapter
CE	Christian Era
CJ	Chief Judge
CJN	Chief Justice of Nigeria
CPA	Criminal Procedure Act
CPC	Criminal Procedure Code
COP	Commissioner of Police
ed./eds.	Editor / Editors
Etc.	(<i>et cetera</i>) and so forth
FIR	First Information Report
FRN	Federal Republic of Nigeria
JCA	Justice Court of Appeal
NNLR	Northern Nigeria Law Report
NWLR	Nigerian Weekly Law Report
Ors.	Others
P./PP.	Page / Pages
PBUH	Peace Be Upon Him
Pt.	Part
QB	Queen's Bench
RA	<i>Radhiyal Allahu Anhu (m)</i> (May Allah be pleased with him / them)
SAW	<i>Sallal Allahu Alayhi wa-sallam</i> (Blessings and Peace of Allah be upon Him)
SCNJ	Supreme Court of Nigeria Judgement
SCNLR	Supreme Court of Nigeria Law Report
V	Versus
Vol. / Vols.	Volume/Volumes

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF THE STUDY

Islamic law is one of the major world legal systems which not only applies on civil matters but also the criminal wrongs. The law is comprehensive and dynamic which also deals with the situation at all times.¹ However, the implementation of the law especially in its criminal aspects seems to be complex one. *Shari'ah* Courts that usually enforce the law have also been facing series of challenges as a result of legal, political and socio-economic factors.² The evolution of the application of Islamic law was in the 7th Century A. D. in Makkah and some part of the Arabian Peninsula. With the expansion of the Arabian Empire, Islamic law became the law of the land in a wide regions extending from Spain to Central Asia. The application of Islamic law thereafter witnessed the greatest expansion which resulted in an extended influence even to the lands which had never been under the control of Arabs including some parts of Africa.³

Islamic law which in Arabic term refer to as "*Shari'ah*" is the command of Allah revealed to Prophet Muhammad (s.a.w). This law has originated and developed from divine sources which comprise the Glorious Qur'an and the *Sunnah* of the Prophet (s.a.w.). The Qur'an and *Sunnah* are regarded as the textual and primary sources of Islamic law. Meanwhile, the non-textual sources of Islamic law are based

¹ Gamal Moursi Badr. "Islamic Law: Its Relation to Other Legal Systems" *American Society of Comparative law* Vol. 26 No. 2 (1978): 187.

² Ibid.

³ Ibid, at 188.

on the power of human reasoning in efforts to deduce rulings in the light of the textual sources of Islamic law (*al-'aql*)⁴

In Nigeria, history has shown that, Islamic law was introduced since the advent of Islam through the activities of Muslim traders and scholars in many communities that made up of Nigeria. In Kanem-Borno for instance, Islam was introduced in the 8th century,⁵ and continued to spread in the empire that by 11th Century, there was a first Muslim ruler of the Kanem-Bornu Empire.⁶ Similarly also, Islamic law was applied in the empire at that same period.⁷ On the other hand, Islam came to Kano and Katsina in the early 14th century in about the same time. In Katsina, the first Muslim ruler to accept Islam was Muhammadu Korau who ruled between 1380-1420.⁸ Islam was further rejuvenated by Sheikh Al-Maghili who arrived at Katsina in 1483. He contributed immensely in the teaching of Islam and he further assisted greatly in the establishment of Islamic law following the acceptance of the then Katsina King Ibrahim Mage to Islam.⁹ Meanwhile, by the 14th century, most of the Hausa states were applying Islamic law as a state law hence it displaced most customary practices which were inconsistent with it.¹⁰

The jihad of Sheik Usmanu Bin Fodio in 1804 brought about the full implementation of Islamic law, more particularly in the communities that largely made up the present Northern Nigeria. This practice continued up till the advent of the

⁴ Gamal, n.1 at 187.

⁵ Oba A. A., 'An Ideological Discourse and Literature Review Review on Islamic Law in the Nigerian Legal System' in *A Digest on Islamic Law and Jurisprudence in Nigeria*, edited by Zakariyau I. Oseni (Auchi Edo State Nigeria: Darun-Nur.2003), 107.

⁶ Ibid.

⁷ Ibid.

⁸ Doi, A. I., *Islam in a Multi-Religious Society Nigeria: A case Study* (Kuala Lumpur Malaysia: A. S. Noordeen, 1992), 19-20.

⁹ Ibid, at 204.

¹⁰ Imam, Y. O., "Application of Shariah in Nigeria Fourth Republic: Problems and Prospects" in *A Digest on Islamic Law and Jurisprudence in Nigeria*, edited by Zakariyau I. Oseni (Auchi Edo State Nigeria: Darun-Nur.2003), 138.

British administration. When they came, they imposed their own laws on the then communities which gradually ousted the application of Islamic Penal law hence by subjecting it to some validity tests.¹¹ The implementation of Islamic law was largely restricted by the British Colonial administration in 1902. This had occur following the eventual conquest of the Northern Province of Nigeria by the British Colonial powers.¹² The practice continued up till 1959 when the Premier of the then Northern region, Sir Ahmadu Bello moved for the proposal to make a reform in Penal law. The aim was to rejuvenate Islamic Penal law in the Northern region, but that ultimate aim was not completely achieved.¹³ Nigeria attained its Independence in 1960. Meanwhile, at the eve of independence, the Sharia Court of Appeal was established for the Northern region. It thus provided an impression that the demand for implementation of Islamic law has been taken care of in the country. There was serious opposition from the non-Muslims on the inclusion of its provisions in the Nigerian Constitution; nevertheless it was included in the 1979 Constitution of the Federal Republic of Nigeria.¹⁴ Thereafter, the position of Islamic law continued to be a controversial issue of debate during all the constitutional conferences including the one in 1995 which gave birth to the current 1999 Constitution of Nigeria.¹⁵

1.1.1 The Katsina State of Nigeria

Katsina was an ancient Hausa city state that predated the establishment of Sokoto Caliphate which was however conquered and brought under the Sokoto Caliphate

¹¹ Ibid, at 151. The validity test comprises; the repugnancy test, incompatibility test and the public policy test.

¹² Doi, n. 8 at 210.

¹³ Ibid, at 211.

¹⁴ Oba, n. 5 at 111-112.

¹⁵ Ibid.

following its annexation by Mallam Ummarun Dallaje in the early 19th Century.¹⁶ With the British colonisation and its eventual conquest of the Sokoto Caliphate in 1903, the Katsina and Daura Emirates constituted a onetime Katsina Province of the erstwhile Northern region of Nigeria.¹⁷ In the later re-structure, the Katsina and Zaria Provinces formed the North Central state of the then Nigerian twelve States.¹⁸ In 1976 the North Central State of Nigeria was renamed Kaduna State thereby retaining its geographical structure despite the increment of the States to the nineteen States of Nigeria,¹⁹ as can be seen from the map below;



Figure 1.1 The Map of Nigeria

¹⁶ “The Katsina State of Nigeria” at<<http://www.onlinenigeria.com/link/Katsinaadv.asp?blub=288>> (accessed 7th December, 2014).

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

Source:²⁰

On the 23rd September, 1987, Katsina State was carved out from Kaduna State.²¹ Katsina State was created alongside with another one more state, bringing the number of the then Nigerian States to twenty one. Katsina State covers the territorial area of the former Katsina Province of the erstwhile former Northern region of Nigeria. At present therefore, Nigeria is a Federation of the thirty six states including Katsina and the Federal Capital territory, Abuja, as shown in Figure 1.1 above.

Katsina State has thirty four local government areas, and the State Government Headquarters is situated at Katsina. The State has the population of about seven million people and Islam is the predominant religion in the State. The indigenous political structure of Katsina State has been under the Katsina and Daura Emirate Councils entrusted in the Emirs of Katsina and Daura respectively. Each of the Emirates has been classified into districts, which headed by their respective district heads called "*Hakimai*" and the districts have been further disintegrated in to villages, headed by villages head called "*Dagatai*." Similarly, the Villages are finally subdivided into wards headed by their respective wards' head called "*Masu Unguwanni*."²²

On the other hand, the Constitutional political structure in accordance with the Nigerian Constitution is the three arms of government per each state of the Federation in Nigeria. This comprises the executive, the legislature and the judiciary. In Katsina state for instance, the State Governor is the Chief executive of the State, which constitutionally administered through the Katsina State Executive Council. The Legislature is headed by the Speaker of the Katsina State House of Assembly, while

²⁰ Available at <<http://www.total-facts-about-nigeria.com/physical-map-of-nigeria.html>> (accessed 7th December, 2014).

²¹ See the Map of Katsina State in figure 1.1 above; the Map of Nigeria.

²² Ibid. n. 16.

the Judiciary is headed by the Katsina State Chief Judge (CJ). However, at the Local Governments level in Katsina State, there are two arms of government comprising the Executive and the Legislature for each local government in the State. The executive arm is headed by the chairman of each local government council while the Legislature is headed by the speaker of each local government legislative council.²³

In Katsina State, the application of the Shari'ah Penal Law was re-introduced through the enactment of the Katsina State Shari'ah Penal Code Law 2001 by the Katsina State House of Assembly.²⁴ This law came into operation on the 20th day of June, 2001. The Katsina State House of Assembly had earlier, enacted the Sharia Courts Law 2000 which came into operation on the 1st day of August, 2000. This law conferred on the Sharia Courts criminal jurisdiction according to the Sharia Penal Law²⁵ The Sharia Courts law in the state established the two tier system of Sharia Courts namely Sharia Courts and Upper Sharia Courts.²⁶ The Courts entertain only criminal jurisdiction at the first instance. However, the Upper Sharia Court is conferred with appellate jurisdiction to hear and determine appeals from the decisions of the Sharia Courts in both Islamic civil and criminal proceedings.²⁷ Earlier, the Katsina State Sharia Court of Appeal was established pursuant to the provision of the Constitution of the federal republic of Nigeria. The provision provides for the establishment of the court to any state of the federation that requires it.²⁸ In Katsina State laws therefore, the court was established by the Sharia Court of Appeal Law.²⁹ Furthermore, the Sharia Courts Law 2000 provides for the right of appeal from the

²³ Ibid.

²⁴ Ibid.

²⁵ Sharia Courts Law No. 5 2000 now CAP. 173 vol. iv Laws of Katsina State of Nigeria.

²⁶ Ibid. Section 3 (1)

²⁷ Ibid. Section 32(1)

²⁸ See Section 275 of the Constitution of Nigeria 1999 which provide thus; "There shall be for any state that requires it a Sharia Court of Appeal for that State."

²⁹ CAP. 124 Laws of Katsina State of Nigeria 1991

decision of the Upper Sharia Court whether sitting in its original or appellate jurisdiction in all civil and criminal proceedings to the Sharia Court of Appeal.³⁰

1.2 STATEMENT OF THE PROBLEM

Katsina State is one of the twelve States of Northern Nigeria that passed the law for the application of Sharia penal laws by the Sharia Courts. The law passed by the Katsina State House of Assembly conferred jurisdiction to the Sharia Courts, to apply the provisions of Sharia penal laws, in all criminal matters in respect of any offence committed by *Muslim* (Person professing the Islamic faith) or against the State.³¹ In addition, the provision of the Sharia'ah Penal Code Law which provides that, punishment of persons professing the Islamic faith shall be under the Sharia Penal Code.³² The provisions seems to be contradictory to the Constitution of the Federal Republic of Nigeria 1999 which also provides for a State High Court the jurisdiction to hear and determine any criminal proceedings involving or relating to any penalty or punishment in respect of any offence committed by any person.³³ By the clear wordings of the constitutional provisions, every person (Muslim and non-Muslim) can all be subjected to the jurisdiction of the High Court. This Constitutional provision has been also adopted by the High Court Law of Katsina State.³⁴

Furthermore, the offences and punishments contained in the Penal Code law³⁵ applicable in criminal matters by the High Court and Magistrate Courts in Katsina State are conflicting with almost all the offences and punishment contained in the state

³⁰ Sections 33 & 34 of the Sharia Courts Law of Katsina state.

³¹ Ibid. Section 5 (1) (b)..

³² Section 3 Katsina State Sharia Penal Code Law 2001.

³³ Section 272 (1) of the Constitution of Nigeria 1999 provides for the jurisdiction of state High Court.

³⁴ CAP. 59 VOL. 2 Laws of Katsina State of Nigeria 1991

³⁵ CAP. 96 Laws of Katsina State of Nigeria 1991.

Sharia Penal Code.³⁶ The Penal Code provides that the provisions of the penal Code are mandatory for the punishment of offences committed by any person in Katsina State.³⁷ Based on the wordings of the section, it implies that, the provision applies to all Muslims residents in Katsina State. On the contrary, the Shari'ah Penal Code Law³⁸ seems to restricts the application of section 3 (1) of the Penal Code Law to non-Muslims in Katsina State contrary to the actual wordings and intent of the Penal Code of Katsina State.

1.3 OBJECTIVES

The study intends to achieve the following objectives:

1. To examine the original and appellate jurisdiction of Shari'ah Courts, in the adjudication of Shari'ah criminal matters in Katsina State.
2. To examine and analyse the jurisdictional conflicts between the Shari'ah and civil Courts in Katsina State with a view to harmonising the conflicts
3. To suggest for amendment of the conflicting laws with a view to having a smooth application of Shari'ah Penal Laws within the Katsina State Shari'ah Courts.

1.4 HYPOTHESIS

In view of the above background, the study hypothesises the following:

1. Whereas the Constitution of the Federal Republic of Nigeria and the Katsina state laws have respectively have conferred criminal jurisdiction to Civil Courts and Sharia Courts over the Muslim subjects of Katsina State, it

³⁶ CAP. 179 Laws of Katsina State 2001.

³⁷ Section 3(1) of the Penal Code Law CAP. 96 Laws of of Katsina State of Nigeria 1991.

³⁸ Section 5 (1) of the Shari'ah Penal Code Law CAP. 179 Laws of Katsina State 2001

therefore seems that, there is conflicts of criminal jurisdiction between the courts.

2. Since there is conflict of criminal jurisdiction between the Civil Courts and the Sharia Courts in Katsina State, Muslim subjects of Katsina state would not have the guarantee of which of jurisdiction of the Courts they would really be subjected to.
3. Both the civil Courts and the Sharia Courts would find it difficult to guard the boundaries of their respective jurisdictions.

1.5 LITERATURE REVIEW

Jurisdiction of Shari'ah courts in the application of Islamic penal law is an issue of concern both by Muslims and non-Muslims living in the jurisdictions where Shari'ah Courts exist. Furthermore, the legal pluralism in most of the jurisdictions where these courts exist attracts more attention on the boundaries of the several courts in terms of their appropriate jurisdictions.

There are numerous works by scholars, professionals and writers in this direction that discussed the issue of jurisdiction of the Shari'ah Courts for the smooth application of Islamic penal law alongside the civil courts that operate in diverse societies. Hence, these works would give the researcher a proper outlook and foundation upon which the study can be built. To this end, the literature review in this study is of two segments. The first segment focuses on the jurisdiction of the Courts while, the second segment is on the application of Islamic penal laws in Nigeria