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Assoc. Prof K.G. Muhammad
Safiyyah U. Mohammed, LLB, BL, LLM

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AN APPRAISAL OF THE LEGAL ACCESS TO FAMILY JUSTICE IN YORUBA LAND OF NIGERIA

Jade Mohammed*
Barakat Adebisi Raji**
Kafilah Lawal-Mohammed***

ABSTRACT

The paper focuses on the choice open to Muslim women on access to family justice in Yoruba land, Nigeria vis a vis the extant courts. Islam has been in Yoruba land as dated back to 14th Century but with no single Islamic court being established to cater for Muslim cases. The lawmakers in these areas did not see the need for creation of additional courts in these areas despite the powers vested in them by the constitution of the land to create additional courts where so desire without necessarily occasioning any injustice. The aim of this paper is to examine the extant courts and access the extent to which they have protected the interest of the Muslim women in this region. The paper adopts doctrinal method where both primary and secondary literature on the subject were analysed. The finding of this paper reveals that the inability of the government authority to sign and ratify the establishment of Muslim courts in these regions has contributed to the rate at which women are being abused and thrown out of their matrimonial homes. Hence, the paper recommends the establishment of Muslim (Shari'ah) Courts in Yoruba land so as to regulate all these anomalies.

Keywords: Choice, Muslim Women, Access to Justice, Yoruba Land, Nigeria.

1. INTRODUCTION

One of the cardinal principles of the rule of law is equal access to justice. Others include supremacy of the law, equality before the law and independent judiciary. All the three legal traditions in the country are inseparably associated with religions. While the common law is associated with Christianity, Islamic law is associated with Islam and Customary law with African traditional religion.¹ The courts have also affirmed that Islamic law is the personal law of all Muslims.² Islamic law is

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1Abdulummini, A.Oba, 'Religious and Customary Laws in Nigeria' (2011) 25 Emory International Law Review, 855 at 891

2Agbebu v Baura [1992] 6 NWLR 80, 90; Shittu v. Shittu [1998], Annual Report of Sharia Court of Appeal

[Kwara State, 1998] 93, 98.

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thus a distinct legal system recognised by the Constitution. Whenever there is a failure on any aspect of these principles of the rule of law, the consequence is an incessant disappointment and state of despair on the part of the citizenry.³ In Islam, Muslims are enjoined to live in accordance with injunctions of the Almighty Allah, also the platform to seek for justice. The courts have also affirmed that Islamic law is the personal law of all Muslims.⁴ Personal issues arising out of marriages conducted according to Islamic law are therefore to be resolved in accordance with the same laws. Such issues are marriages property, charitable endowment (*wakf*), gift, or succession – and administration of the affairs of persons with diminished capacities – infants, prodigals, or persons of unsound.⁵ Marriage issues also encompass maintenance, custody and guardianship of children and divorce among others.

2. FORMAL AND INFORMAL JUSTICE SYSTEM FOR RESOLUTION OF FAMILY DISPUTE

Due to the peculiar nature of the legal problems faced by most women in Nigeria and the cultural attitude which tend to favour the resolution of family disputes within the family, most aggrieved women give precedence to informal mode of dispute settlement or go to welfare institution to seek for justice than exploring formal judicial settlement. Court is usually resorted to only when the outcome of informal institutions are unfavourable, not satisfying to either of the parties concerned. Though informal mechanism for dispute resolution constitutes an integral part of the judicial system, the fact that they fall outside the supervision of formal judicial institutions sometimes result in their procedures not complying with their well accepted guidelines which ought to have ensured fair and equitable outcomes.

2.1 Informal Channels for Justice

There are many channels available to seek for justice and dispute resolution in Nigeria. Some of these include family forums, Communal committees and Private Mediation Initiatives:

2.1.1 Family Forum

Traditionally, family plays an important role in the administration of justice.⁶ The Family in this sense transcends beyond the immediate family (i.e. the extended family). In traditional communities, every family is headed by a family head. He is the principal adjudicatory authority for his family. He resolved all sorts of conflicts arising among members of that family; the most important of which always revolved around matrimonial disputes. Though, the role and importance of the family

³Per KashimZannah, Judge of High Court, Maiduguri 'Sustaining Democracy through the Law' At the Nigeria Association Law Teachers Conference[2003] (NALT) held in October 2003).

⁴Agbebu v. Baura (1992) 6 NWLR 80, 90, Shittu v. Shittu, (1998), Annual Report of Sharia Court of Appeal (Kwara State) 93, 98.

⁵Abdulmumini, A. Oba, Ibid, 881.

⁶Ayokunle A. Adebayo, 'Challenges of Accessing Justice in Contemporary African Society : Lessons From Yoruba Juristic Practices' 35 *Al-Hikmah Law Journal*, (2015): 9

have been defined significantly since the introduction of modern family structures that are more often nuclear in structure and composition. However, the family head and elders still play an important role in the resolution of matrimonial disputes. Some of the disputes they deal with include maltreatment and battery, divorce and child custody and maintenance after divorce. In most instances, the advisory efforts are geared towards a patriarchal goal which always results in immediate protection of the rights of the women. Cultural perception of the role of the woman glorifies the woman who is able to patiently persevere all the indignities and neglect that they encounter in their marriages. As a result, the most prevalent remedy available to women is through exhortation (women are advised to be patient while the man is reprimanded). The method proves to be effective in some situations, but where either or both parties prove recalcitrant resolutions remain a worthless thing. Aside from this, lack of formal training of these family heads in adjudication and arbitration devoid them of the expertise to perform their role effectively. Most of these elders do not possess Islamic knowledge required to adjudicate on Islamic matters. Hence, the agitation of Muslim women using such forum for dispute resolution will be defeated. In addition, the composition of these elders sometimes may largely consist of non-Muslims which are usually the case in the Western part of the country where most families are of a mixed religious background. It is not unusual to find Muslims, Christians and even traditional worshippers within the same family. There are also instances where Muslim parties are faced with mediators who are not of the same religion with them. In such a situation, it would be practically impossible to have such a dispute resolved based on Islamic teachings.

2.1.2 Communal/Community Forum

Traditionally, the judicial hierarchy for dispute resolution progresses from the court of the family head to the local traditional chief and finally to that of the paramount head of the community. However, this role of the traditional rulers in the administration of justice has been drastically influenced following the independence and supplanted by customary courts which play an important role in resolving disputes in their local communities. Some of the disputes they resolve include boundary disputes, petty criminal matters and matrimonial disputes. In some instances, where a matrimonial dispute proves intractable at the family level, recourse is usually made to the court of the traditional paramount ruler.⁸ In such courts, adjudicatory duties are performed by either the local titled chiefs or the paramount head himself. Just like most informal channels, such courts are usually not bound by any procedural rule that would have guaranteed a fair and equitable

But Arder, "How Traditional Justice in Nigeria is Changing," *Foreign Magazine* 12168
<http://www.foxnews.com>

[illegible]¹⁰ *Yakutskaya Sovetskaya Rossiya*, 1992.

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outcome. They also do not have any formal mechanism for enforcing their orders beyond the voluntary acquiesces of the parties, usually arising out of the traditional respect attached to such traditional institutions.

2.1.3 Civil Society Forum

Apart from this traditional informal mechanism, there are also constituted civil society groups. Most of these groups are usually faith-based socio-religious societies. They are quite common in most urban areas. They serve as a forum for socialization of people of similar faiths and orientation. While most of their activities are religious in nature, they also adopt a socio-welfare approach in their operation. In such instances, they would attend each other's social functions and this also extends to solving minor personal issues including matrimonial disputes. This function is assigned to special committees who are charged to perform the said responsibilities. They are constituted under such appellations as Council of Elders or Family Forums.⁹

There are also media based mediation panel which is a popular forum for resolving matrimonial disputes. This forum emerged from the provision of the Holy Qur'an¹⁰ and borrowed by the United States of America and found its way to other parts of the world.¹¹ This strategy involves the setting up of mediation panels usually headed by a neutral and independent person to which members of the public can direct their complaints to. This process is cheaper and less fatigue than the formal mode of dispute settlement.

The effectiveness of these forums unlike other informal channels is their ability to ensure compliance through social pressure exerted by the publicity attached to the proceedings. This is also its major disadvantage and may account for why such forums are usually patronized by members of the lower echelon of the society, who do not have much care for the attendant negative publicity and might even enjoy the publicity and notoriety arising from their on-air appearance. Though, this forum is not without its own challenges namely poor training and lack of procedural framework that guarantees adequate protection and respect for the rights of those appearing before such panels.

2.2 Formal Channels for Dispute Resolution

The courts and welfare institutions remain the most well-established formal forums for women to seek redress. Generally, most couples resort to court, where the informal forum fails. The nature of court procedures makes it difficult for most litigants who cannot afford the service of lawyers. There has been a radical trend in most advanced countries in making family disputes resolution process less formal.¹²

⁹Examples of such groups are the Nasrullahi Fathi Society (NASFAT) and Ansar-urDeen Society of Nigeria

¹⁰Mediation (Suhl), Q.4 v35; Q. 4V 58 and Q. 4 v 65.

¹¹The earliest of such courts was the People's Court, which settled small-claims on-line.

¹²Maya Wolf-Robinson, 'Family Courts Need Radical Change of Culture Says Lord Chief Justice' (2012) *The Guardian* (Nigeria, 31 July 2012), available at <https://www.theguardian.com/law/2012/jul/31/family-courts-report> accessed on 11th December,

The aim is to achieve maximum access to justice by the less privileged. Nigeria needs to learn from these countries in order to make family dispute resolution less adversarial.

As it is known that Customary/Area courts and the Magistrate Courts and the High Court deal with women and children cases, Customary and Area Courts are generally inferior courts that are created under the residual powers of States as granted by the Constitution. They are widely found in all the rural areas of the states. People living in rural areas make use of the customary court to determine their cases. Though formal courts, their procedures are not as formal as that of Common Law Court thereby making it accessible for most litigants. This is in line with the dictum of *karibi-Whyte JSC in Kunso v Udo*,¹³ where he reiterated the importance of Area courts.

The equivalent of the customary courts in the South is the Area Courts. Unlike the customary courts which adjudicate wholly based on the indigenous laws of the people, the Area courts utilize Islamic law which is recognized as the personal Law of Muslims in the Northern parts of Nigeria. Thus, issues such as divorce, inheritance and child custody, Islamic law can be applied.

This dichotomy, however, makes the customary court an unsuitable avenue for Muslim women in the South because the court based its adjudication on indigenous laws of the people while the Area court makes use of Islamic laws. Hence need for Area courts to be established in this area for equal justice for Muslim women.

2.2.1 Magistrate Court

Magistrate courts are inferior courts, which are created under state laws. In the North, they serve as District Courts when dealing with civil matters. Generally, Magistrate Courts do not have much jurisdiction in respect of matters relating to women such as divorce, succession and child custody. However, they hear and determine such matters relating to the rights of children as provided under the Child Rights Act and now vested in the Family Court. For example, section 149 of the Kwara State Child Rights Act,¹⁴ provides as follows: 'There is hereby established for the State, a court to be known as the Family Court for the purpose of hearing and determining matters relating to children.'

Members of this court consist of Magistrates not below the rank of Chief Magistrate and Area Court Judges not below the rank of Upper Area Court. Impliedly, the dispositions and orders that can be made by the Family Court cannot exceed the

2021; Jane C. Murphy, '78 Revitalizing the Adversary System in Family Law' (2010) 78 *U. Cin L. Rev.* 3, 1

¹³ *Kunso v Udo* [1990] 2 SCNJ, 40 where he stated thus: 'it is important to appreciate the fundamental factor that Area Courts created under the Area Court Edict, 1986 [Benue State] which are the successors of the former Native Courts, which in turn were the courts that replaced the pristine traditional methods of the administration of justice are designed to adhere to our indigenous methods of administering justice.'

¹⁴ Kwara State Child Rights Act, [2016], S. 149, CAP.K6 Laws of Kwara State.

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ordinary powers of such category of Magistrates and Area Court Judges. Apart from the jurisdiction, Magistrates are ordinarily expected to have jurisdiction in the cases of assault, which arise from domestic violence. Unfortunately, women rarely submit themselves to criminal charges, even where assault actually occurred.¹⁵ Moreover, the provision of the Penal Code appears to condone the use of physical means to correct wives so long as it does not lead to injury thereby making the legal framework for the enforcement of issues of domestic violence blurred which explains the paucity of criminal cases on domestic violence.

2.2.2 High Courts

The High Courts vested with unlimited jurisdiction. This assertion is equally reflected in the Constitutional provisions creating them. Apart from this, the High Court is also the traditional forum for cases involving dissolution of statutory marriages and the dissolution of Estates of married persons under the Act. Though, most married Muslim women conducted in accordance with tenets of Islamic Law while some Muslims elect to conduct their marriages under the Matrimonial Causes Act. In such instances, where a person has written a will, stating the manner in which he wants his estate to be distributed, such property may not be devolved according to Islamic law. This may be inimical to the rights of Muslim women, especially where the will does not comply with principles of Islamic law. Such potential inequity is evident in the facts of *Ajibaiye v Ajibaiye's case*¹⁶, where the deceased had purportedly made a will, excluding the application of Islamic law to his estate. He went ahead to devolve his estate in a manner that was particularly favourable to his last wife. The court held that since he had no such right going by the Administration of Estates Law of Kwara State¹⁷ and that his property ought to be distributed equitably in accordance with Islamic Law.

It is, however, important to note that this provision only applies in states of the old Northern and Mid-West Region (where it relates to Customary Law). Therefore, a Yoruba Muslim who desires that her husband's estate be shared according to Islamic Law would have no cause of action in Yoruba land because of the nonexistence of such law there.

3 MARITAL ISSUES IN ISLAM: MARRIAGE CONTRACT

Marriage is the social institution of lawful unification of a man and woman for the purpose of having lawful sexual intercourse and procreating children so as to preserve the human race. In Islam, marriage is compulsory for a person who is able, has strong sexual desire and can afford dower and maintenance as laid down

¹⁵ M.T. Shija, 'Domestic Violence and Its Impact on Women's Rights' A Paper Presented at a Consultative Forum of Stakeholders to discuss the Domestic Violence Draft Bill in Benue State-Nigeria; M. Bazza, 'Domestic Violence and Women's Rights in Nigeria' (2009) 4 *Societies Without Borders* 2, 188.

¹⁶ *Ajibaiye v Ajibaiye* [2007] All FWLR (pt359) 1321.

¹⁷ Section 1 (1) (b), Administration of Estates Laws of Kwara State [2006], Cap A1, Laws of Kwara State provides as follows: This Law shall not apply to the estates of deceased persons, the administration of which is governed by Islamic Law.

by Shari'ah.¹⁸ Marriage takes a contractual form thus, requires the essential requirements of a valid contract, agreement, intention to create legal relations and consideration. Written contracts are not common in Muslim marriages in Yoruba land (An interview with Imam Dr. Makinde)¹⁹ However, Under the Shari'ah, marriage contract entails the following legal requirements namely: 'marriage subtraction (*māhal*); absence of legal impediments; payment of the dower (*sadaq*), marriage formula (*sighah*); marriage guardian (*wali*) and witness (*shuhud*). Otherwise there is no marriage.²⁰

Parties to a marriage contract are free to make stipulations in the agreement. As long as such stipulations are not contrary to Sharia or public morality and parties to such marriage contract are bound by it. In fact any stipulation that is illegal or opposed to public morality is void *ab initio* and cannot be enforced. However, stipulations such as a wife shall not leave the matrimonial residence or that the husband shall not contract a second marriage while the first marriage is still subsisting are permissible under Sharia.²¹

Maintenance: Divorce Procedure

Muslim personal law of divorce applies where both husband and wife are Muslims and where both husband and wife (even if not Muslims) subject themselves to Muslim Personal law. It will also apply where the marriage is conducted in accordance with Muslim law of Divorce under Muslim Personal laws may take five forms as follows²²:

- i. *Talaq* — where the husband repudiates the marriage. However a woman who has dictated certain terms with her potential husband before the formalization of her marriage has the right to demand that the husband pronounces *talaq* when he breaches any term.
- ii. *Mubarah* — where both parties decide to bring the marriage to an end.
- iii. *Khul* — where the wife offers ransom to obtain her release.
- iv. *Tafriq* or *faskh* — where the wife seeks her release on the ground of violation of the marriage terms by her husband in a court of law. This is court process.
- v. *Zihar*, *ha* and *Lia'n* divorce by comparing a wife to the husband's mother, divorce by a husband making oath to abstain from sexual intercourse for four

¹⁸For other instances such as when marriage is obligatory and recommended; Abdulmalik Bappa Mahmud, 'Marriage and Divorce under Islamic law' 10 *Nig. Feminist Law Journal*, 83-87.

¹⁹A. Makinde, A Senior Lecturer in the Department of Counselling Education, asserted that Muslim marriages is usually conducted without a written agreement because the husband is entitled to marry up to four wives. There is nothing like one man one wife in Islam.

²⁰Harsh Nayak, 'Nikah: A Contract of Marriage' (2021) 1 *Jus Corpus Law Journal Open Access Law Journal*, 4, 49

²¹Amina Wambai, 'The Rights of Women in Islam' (FOMWAN Annual National Conference, Benin, Edo State, 14 August, 1998).

²²M.A Ambali, 'The Practice of Muslim Family Law in Nigeria' (1st Supp. (2nd edn, Published by Tamaza & co. Ltd Zaga 2003), 146; Sodeinde, 'Islamic Marriage Ceremony' (1968), Lagos cited in E. Nwogugu, Family Law in Nigeria (1990), 60.

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months or more, or husband accusing his pregnant wife of adultery respectively. This is the practice before Islam. It has no basis again.

For the purpose of understanding the position of Muslim women in the South, it should be noted that a good number of them are into Islamic marriages. The principal requirements are consent of the parties, parental consent, dowry (*sadaaki*), and marriage ceremony or solemnization by a Mallam in the presence of at least two upright Muslim witnesses. Most of such marriages are conducted in registered or licensed mosque and oftentimes certificates are issued to parties. Despite this kind of marriage arrangement, couples do not make recourse to these Mallams (spiritual heads/ leaders) for family dispute resolution forgetting that they have roles to play. However, there is no blame on couple who refuses to submit their case to Mallam because his decision is not bound on them but persuasive. Hence the need for establishment of Muslim courts in Yoruba land.

4 LEGAL ISSUES IN THE APPLICATION OF CUSTOMARY LAW TO MUSLIM MARRIAGES VIS A VIS CUSTODY, GUARDIANSHIP AND INHERITANCE

The general rule is that customary law is only applicable to Nigerians who either expressly or by implication agreed to be bound it.²³ In the North, there are statutory definitions that customary law includes Islamic law.²⁴ Oba has pointed out that this rule does not hold water in some of the Northern states such as Kwarain view of the provision of the Plateau State Customary of Appeal.²⁵

In the South-Western states, the law is silent about the status of Islamic law. However, only Customary and Magistrate Courts were established and all the appeals therefrom go to the High Court or Customary Court of Appeal. Customary laws are applicable in this Court which is alien and contrary to Islamic law. The Customary Courts do not adjudicate based on knowledge of Islamic law nor does it vested with the power to invite Islamic assessors to advise the courts on Islamic matters. This had earlier been noted by Okunola.²⁶ Mohammed Bello CJN as he then was thus:

Although millions of Muslims in Ogun, Ondo, Oyo and Lagos States contract marriages in accordance with Sharia, there are no Sharia Courts in these states to adjudicate on any question of Islamic personal law regarding such marriages, including a question relating to the validity of dissolution of such marriage or relating to family relationship or guardianship of an infant. The same applies to any question of Islamic personal law regarding a Wakf, gift, will or succession, where the endower, donor, testator or deceased person is

²³ *Labinjoh v. Abake*, [1924] 5 NLR 33, 36; *Griffin v. Talabi*, [1948] 12 WACA 371, 371-73.

²⁴ *Section 2 of the High Court law*, laws of Northern Nigeria, [1963], Cap (49), S. 34 provided that the term "Nature Law and Custom" includes Islamic law).

²⁵ Abdulmumin, A. Oba, Ibid.

²⁶ M. Okunola, 'The Relevance of Sharia to Nigeria' Proceedings of the Islam in Africa Conference, (1993 edn, Spectrum books, Ibadan 1993), 22 at p. 3

a Muslim. All these are matters are for learned judges in Sharia law to consider and determine.

It is in the light of the above reasons that Muslims advocate for the establishment of Sharia courts in these states. At this junction, it is pertinent to note that Muslims are demanding for their constitutional rights because the existing Courts do not meet their quest.²⁷ The law and procedures of these Courts are common law based to which Muslim parties are at disadvantage.²⁸

It is a wrong assumption that customary law includes Islamic law. Okunola had clearly demonstrated that both Islamic law and customary law are different and distinct from one another comparing the substance of success or system in the two legal systems.²⁹

The non-establishment of Shari'ah courts for Muslims in the South is unconstitutional and should therefore be looked into in this democracy dispensation.³⁰ Democracy is more of the fulfilment of responsibility of the government to its people, observance of the rule of law and enforcement of fundamental human rights. Equal treatment of the majority and the minority population must be guaranteed.³¹ The principles of rule of law demand that every citizen is given opportunity to access justice. Muslim families in the south are being denied this opportunity, Muslim women and children are at more disadvantage. Access to justice is a pillar of the rule of law as entrenched in the constitution.³² Moreover, the constitution is supreme, all governmental powers and procedures must therefore derive their roots from the constitution. Every citizen is entitled to be heard by a court or a tribunal established by law in resolving disputes.³³

In the Shari'ah implementing states of the North, Muslim women have better access to justice in family matters. They seek redress for the violations of their rights in accordance with Islamic personal law. Although there are still some challenges, but this is beyond the scope of this paper.³⁴ The non-establishment of Islamic courts to adjudicate on Muslim personal laws is a clear contravention of sections 38 and 42 of the Constitution of the Federal Republic of Nigeria.

²⁷ M. Okunola, *Ibid*.

²⁸ Oba, 890.

²⁹ M. Okunola, 'Relationship Between Islamic Law and Customary Law of Succession in Southern Nigeria' (1st edn, 1984):157-172; M. Okunola, 'Interactions Between Islamic Law and Customary Law of Succession Among the Yoruba People' (Ph.D thesis, University of Lagos, 1984):133-245.

³⁰ Section 13-24 of chapter II of the 1999 Constitution states that Nigerian is a state founded on social justice).

³¹ Jadesola Akande, "1999 Constitution, Democracy & The Rule of Law," in *Miscellany at Law and Gender Relations*, (MIS Publishers, Lagos 2005): 44.

³² S. 1 and 36 of the 1999 Constitution of the Federal Republic of Nigeria.

³³ J. Muhammed, A. Adeyombo, & N. Osahon, 'Basic Law in Nigeria' (Obafemi Awolowo University Press, Ile-Ife 2011), 81 & 84.

³⁴ Rafatu Abdulhamid, 'Impact of Re-Implementation of the Shariah on the Rights of Muslim Women of Sokoto and Zamfara States, Nigeria (2002-2012)' (Ibadan, Spectrum Books 2017), 206-210.

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An Appraisal of the Legal Access to Family Justice in Yoruba Land of Nigeria

Although the constitution provides that any state that requires a Shari'ah Court of Appeal can establish it.³⁵ This shows that it is not automatic. The creation of the Shari'ah Court of Appeal depends on three factors. These are the population of the Muslims in that state, demand for it by the Muslims, and the existence of a lower Court to serve the Shari'ah Court of Appeal.³⁶ Astonishingly, both Osun & Oyo States have been able to establish Customary Court of Appeal with no intention to create Shari'ah Court to adjudicate on Muslim personal matters.³⁷

It is in response to this non-challant attitude of government that Muslim communities in the Southwest have risen up to establish Shari'ah panel dealing with family matters including divorce, maintenances and child custody.

5 THE ROLE OF SHARI'AH PANEL IN PROVIDING ACCESS TO JUSTICE IN FAMILY MATTERS IN YORUBALAND

Before the advent of British colonialists in 1861, Shari'ah legal system had been established in Yoruba land. Application of the Shari'ah was established in places such as Ede, Ikirun and Iwo.³⁸

Shari'ah thus became the second legal system among Muslims whose original system of law was customary law.³⁹ Colonial rule coupled with Christian evangelism, brought with them the English Legal system which later developed into the general law.⁴⁰

Native Councils and courts became the foundation of British rule. Thus the customary law was tolerated and enforced. While Shari'ah, with its potentialities, was seen as a rival or threat to Judo-Christian common law. Consequently, it was held that Shari'ah should no longer be enforced in the South. This was reflected in a series of judicial decisions of the period.⁴¹

In fact, all efforts by Muslims to expand Islamic Law in the area were frustrated with the excuse that customs of the area, which are not a foreign culture, should be promoted. In 1894, the Lagos Muslims petitioned for Shari'ah while the Ibadan Muslim Community and The Muslim Congress (TMC) of Ijebu-Ode made the same

³⁵ S.6 of the 1999 Constitution of the Federal Republic of Nigeria.

³⁶ Tajudeen, M. AbdulGaniyu, 'Demand for Establishment of Shariah Courts in the South-Western States of Nigeria: Reality or Fantasy?' in At-Tibyaan (The Exposition) 1(2), (2010/12), 66 at pg. 69

³⁷ Tajudeen M. AbdulGaniyu (ibid)

³⁸ Abdulfatah Makinde 'The Evolution of the Independent Sharia Panel in Osun State, South-West Nigeria' in John Chestworth & Franz Kogelmann (eds), Shariah in African Today, Reactions & Responses, 15 Brill, Leiden-Boston, (2014)

³⁹ T.G.O. Gbadamosi, 'The Growth of Islam among the Yoruba, (1978) (Longman Press: 1841-1908, 1978): 3.

⁴⁰ Gbadamosi T.G.O. (ibid).

⁴¹ Such judicial decisions include *Re: Aminatu Alayo* [1946] 18 NLR 880 where the court held that the deceased though a married Muslim did not subject herself to Islamic Law because there was no such evidence and that Ijebu-Ode was not a Mohammedan area; *Adesubokan v. Yinusa* [1971] NNLR 77; *Molade v. Ogunisola* Suite No. 231 of 1994.

attempt without success.⁴² However, there was a radical movement in the early year 2000, campaign for Shari'ah legal system to deal and administer Islamic personal laws re-emerged which culminated in the establishment of Shari'ah panels in Lagos, Oyo and Osun State. Hence, Lagos State Shari'ah panel was eventually born in the year 2002; Oyo in 2002 while Osun came up in 2006.⁴³

Status and Modus Operandi

A Shari'ah panel is a private arbitration tribunal the Independent Sharia Panel ('ISP'), essentially an arbitration panel and subject to arbitration laws of the country. Parties submit to it voluntarily and the awards are recognized and enforceable by the formal courts.⁴⁴ The decision of the court remains a piece of advice until such award is registered in a law court. However, the panel's rules and procedures are based on the Quran and the Sunnah of the Holy Prophet (SAW).⁴⁵

6 CHALLENGES FACING THE SHARI'AH PANEL AS AN AVENUE FOR FAMILY JUSTICE FOR MUSLIM WOMEN

One of the challenges facing this panel includes funding. Although the Shari'ah panels operate mostly on pro bono so to say, that is, service charge is free as well as forms and processes of the court as a result of the efforts of the Muslim community members from their meagre resources. Panellists are learned and versed in Islamic law (volunteers), they bear costs on their shoulders and need to be placed on salary like judges in the common law courts. The inadequate funding has limited the capability of this panel from establishing more branches in the needed locations. This is contrary to the global requirement of access to justice by all and manifestation of exclusion from benefiting from the state's provision for justice mechanism available to non-Muslims.⁴⁶

Enforcement Mechanism

The Shari'ah panel's decision is of persuasive effect, not legally enforceable. Its processes and decisions cannot be enforced directly and independently. Defendants are taking this advantage to shield themselves away from the panel because there is no law commanding their appearance before the panel *suomotu*. This is really pulling down the efforts of this panel as well as that of complainants. It is highly

⁴²Muri Okunola, 'The Relevance of Shariah in Nigeria' A Paper Delivered at Islam in Africa Conference, (November 1989), Abuja, Nigeria.

⁴³Abdulfatah Makinde & Philip Ostien, 'The Independent Shariah Panel of Lagos State' 25 *Emory International Law Review*, (2011), 922-944; Abdulfatah Makinde, 'An Assessment of Independent Shariah Arbitration Panel In Oyo State' in Y. O. Imam, R. I. Adebayo, & Abubakar I. Ali- Agan (eds), in *Dynamic of Revealed Knowledge and Human Sciences, Essays in Honour of Prof Ishaq Olanrewaju Oloyede*, (Spectrum Books, Ibadan 2018), 1-35; Abdulfatah Makinde 'The Evolution of the Independent Sharia Panel in Osun State, South-West Nigeria in John chestworth & Franz Kogelmann (eds), 'Shariah in African today, Reactions & Responses,' *Brill, leiden-Boston* 15, (2014).

⁴⁴Abdulmumini .A. Oba, "Religious and Customary Laws in Nigeria," 25 *Emory International Law Review*, (2011), 891; Abdulfatah Makinde, (2018).

⁴⁵Interview with Dr. Abdulfatah Makinde, A member of Independent Sharia Panel of Osun State.

⁴⁶Interview with Dr. Abdul Makinde 14/1/18).

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