

UNIVERSITY OF MAIDUGURI

JOURNAL OF ISLAMIC AND COMPARATIVE LAWS

VOLUME 2, No. 1. | DECEMBER, 2017

TOWARDS STRENGHTENING EXCLUSION OF PRECEDENT FROM SHARIA: AN ANALYSIS ON THE EXTENT OF JUDICIAL PRECEDENT IN SHARIA COURTS IN NIGERIA AND MALAYSIA

By

*Murtala Ganiyu A. Murgan **Garba Umaru Kwagyang

ABSTRACT

The doctrine of judicial precedent which states that the court must stand by what has been decided in a case when deciding a new case by a judge in court, is commonly known and used among the countries that practice common law system. However, it is presently observed that the doctrine of judicial precedent which is not to be practiced in Shariah Court is known to be extending its influence to Sharia Court. This paper makes a comparative study of the extent of influence of judicial precedent in Shariah courts in Nigeria and Malaysia, with a view to ensuring total exclusion of the practice of precedent from sharia courts and ensuring independence of Sharia courts. Based on doctrinal research approach, this paper examines the concept of judicial precedent and operation of doctrine of judicial precedent among different categories of Sharia courts in Nigeria and Malaysia. It is generally observed that the practice of judicial precedent is not applicable to all Shariah Courts in Nigeria and Malaysia. It is however observed that despite exclusion of judicial precedent from shariah courts in the two countries, there are few instances where the practice of judicial precedent is gaining some influence on the jurisdiction of Shariah courts particularly in Nigeria. This gives the impression that the Shar'iah courts are placed under the power of common law courts. It is further observed that this position constitutes a problem to independence of Shariah Courts and therefore conclude that the practice of judicial precedent should totally be excluded from Shariah Courts in order to ensure thatmore independence is granted to Shariah Courts. This study provides an opportunity to compare note on the administration of judicial precedent in the Shariah courts in Nigeria and Malaysia.

Key words: Exclusion of jurisdiction, Shariah Courts, Judicial Precedent.

1.0 INTRODUCTION

Exclusion of Sharia courts from the practice of judicial precedent which is applicable to common law courts has been a long debate among legal practitioners and experts in Shariah law. It has been observed that in some jurisdictions, the Shariah courts which were hitherto established on the basis of shariah are presently muzzled into implementing the doctrine of judicial precedent in some decided cases involving the common law courts. This practice has been frowned at and it is argued that the Sharia courts should be allowed to operate according to sharia principles devoid of judicial precedent. Therefore, discussion on the above topic shall focus on the concept of judicial precedent which includes the definition of judicial precedent, the types of judicial precedent, the principle of judicial precedent and the doctrine of judicial precedent. It shall also discuss the operation of judicial precedent as well as advantages and disadvantages of judicial precedent. Further, this paper shall embark on comparative analysis on the operation of judicial precedent in the Sharīah courts in Nigeria and Malaysia.

1.1 Concept of Judicial Precedent

Judicial precedent is defined as a judgment of a court of law, cited as an authority for deciding a similar set of facts in a similar case.[1] A decision of the court is used as a source for future decision because, while giving judgment in a case, the judge having set out the facts of the case, will state the laws applicable to the facts and provide his decision on the case . Such decision given by the judge of a higher court, which remains binding on all other courts below and accepted as binding on such courts below, shall become authority for future similar decision and be regarded as judicial precedent.[2] Judicial precedent which is also known as Stare Decisis, means to stand by what has been decided in a case in court or to stand by earlier decision made in court by judges.[3] Further, judicial precedent can be defined as a judicial decision that is binding on lower courts or other equal courts of the same jurisdiction, with regards to its conclusion on a point of law and may also, be persuasive to courts of equal and other jurisdiction in future cases involving sufficient similar facts.[4] Some instances where the above principle of judicial precedent was applied include the cases of *Jones v Kany,*[5] *and Jones v Kernott*[6], In the above, the supreme court of UK did not depart from previous decisions of House of Commons. Also in the case of *Clement v Iwuanyanwu,*[7]

Oputa JSC, described judicial precedent as a decision of higher court considered as an example for identical cases with similar questions of law in future, such binding decision may not totally be that of a higher court as some courts are also bound by their own decisions.. The law derived solely from decision of the court is known as the common law which is largely a judgment law. The majority of English law was not enacted by parliament but developed by judges who applied existing rules to new situations as they arose. This is achieved by following the example or precedent of earlier decisions and .through this, the judges have developed common law case by case, by way of analogy.[8] Therefore the practice of precedent is common with countries that follow common law system.

1.2 Types of Precedent

Precedent may be classified as original, derivative and declaratory or binding and persuasive as follows:[9]

Original precedent: Original precedent is the precedent that establishes a new rule of law and usually occurs in cases of first impression where no existing precedent is available.[10] However, this type of precedent is not common.

---

*Murtala Ganiyu A. Murgan, B.A (Hons), MPA, LLB Hons, BL, LLM, PhD (Malaysia), Lecturer, Department of Jurispudence and International Law, Faculty of Law, University of Ilorin Nigeria.
**Dr. Garba Umaru Kwagyang is a lecturer, Department of Public Law, Faculty of Law, University of Maiduguri.

[1] Byrant A. Garner (ed),*Black Law Dictionary 8th edition,*(Thompson West 2004) , 45.
[2] Hamza W.A, Bulan R, *An introduction to the Malaysia Legal system*(Oxford Fajar Sdn Bhd,Malaysia, 2oo3) , 68.
[3] Ibrahim A, Joned A: *The Malaysian Legal System,* (Deman Bahasaolan Pustaka,kualarLumpur,Malaysia1987), 113.
[4] *American Heritage Dictionary of English Language* 5th (edn),(Hougton Miffin Harcot publishing Company,2011),1
[5] (1966) 1WLR,1234.
[6] (2011)UKSC
[7] (1983) 3 NWLR Pt 1(07}, 54.
[8] Hamza W.A,Bulan R, 69.
[9] John Ochirime Asien, *Introduction to Nigerian Legal System,*(Sambookman Publication 1998), 72.
[10] See Zaidan v Mohasen [1973] 11, FS.C.1 at 17.

Derivative precedent: Derivative precedent is the one which extends frontier of an existing rule to accommodate similar cases where non exists before.[11]

Declaratory Precedent; this is of a least value, it is just a mere declaratory precedent, it does not confer any validity on a decision, however, it helps to consolidate the authority and validity of past decision.

Persuasive Precedent: a precedent is known to be persuasive when it is urged to be followed or departed from, this is common the lower courts of the same power or senior courts of the same jurisdiction. For example, decisions of foreign court are not binding on courts in Nigeria or Malaysia, but are always taken on persuasive authority, notwithstanding the fact that judges often refer to judgment of foreign courts.

Binding Precedent: a precedent is said to be binding when the lower court within which it is being used is bound to follow the decision of the higher court. This means judges of lower court must follow decisions of superior court but can choose whether or not to follow decision of inferior court or court of coordinate level with them. However, the use of binding or persuasive precedent depends on the position of the court from which it emanates. [12]

1.3 The principle of judicial precedent or Stare Decisis

Two principles that are involved in judicial precedent or stare decisis include:

Ratio decidendi: this means reasons behind the decision, it also means the principle of rule of law on which court decision is bounded.[13] Ratio decidendi can also be explained as the point in a case which determines the judgments or the principle on which the case is established. It is also known as the binding aspect of previous decision in court. This is because judges use decisions made from ratio decidendi to create binding a precedent to be followed by a lower courts. In addition, the rule of judicial precedent only appeal to cases with similar facts as a judge is not bound by decision of superior court that the facts are different from the case in hand[14].

Obiter dictum which constitutes the second principle of judicial precedent means anything said by the way of original case. Obita dictum is the passing comment made by the judge which may be relevant but not a direct justification for the decision.[15] As it was explained by Edgar Jnr FCJ, in *Cooperative Central Bank Ltd((receivership) v Feyen Development Sdn Bhd,*[16] an obita dictum is a mere chance remark by court the and is issued in contradiction to ratio decidendi which is the rule of law on which authority is based. Obita dictum is persuasive on courts because it is not strictly relevant and a judge may not have to strictly follow it in a later case.[17]

However, the distinctions between Ratio decidendi and Obita dictum are that while Ratio decidendi should be followed in court, Obita dictum is viewed by court as a statement that can be ignored. Also,

---

[11] E.g *Chairman L.E.D.B v Oloponkwu (1959) 4 F.S.C.1 at 53*, where court adopted an earlier rule in respectof a salt factory that turn outto be a wasteful venture.

[12] See Johson -Lawanson[1971] 1 MLR 380 , [1971] 1 ALL MNR 56 where supreme court upheld *Awosanya v Anifowoshe (1959), 4 FFSC 94* and took opportunity to depart from earlier decision

[13] Byran A. Garner , 69.

[14] What is Ratio Decidendi? <https://www.google.com/#q=ratio+decidendi>accessed 10 Aug,2015.

[15] Venugopel A. Vijayalakshmi, *Introduction to Law in Malaysia,* (Sweet Maxwell publications Malaysia,2011),123.

[16] [1997] 3 AMR 2673 (Federal Court) at 2681.

[17] What is ratio Decideni? n 13at 1

Ratio decidendi is judicially binding on the lower courts while Obita dictum is persuasive.[18] Ratio decidendi is a statement made while relating to a case in court or while responding to an argument made by an attorney, while obita dictum was a statement made by the way. In term of weight and authority, ratio decidendi is observed to carry greater weight than Obita dictum. Further, in term of judicial application, Ratio decidendi is found to be more directly related to the facts in a case, it is binding and form part of judicial precedent while Obita dictum is not.[19]

1.4 The Doctrine of Judicial precedent or Stare Decisis

The doctrine of judicial precedent or stare decisis means that in cases where material facts are similar, a lower court is bound to follow the earlier decision of a higher court and in case of a higher and superior court, to follow its own prior decision and prior decision of court of the same level i.e. of equal coordinate jurisdiction, whether past or present in the same hierarchy.[20] This is the position with binding precedent as the decision of superior court must be respected by the lower courts. Superior court has the power to overrule decisions of lower court. Appellate courts are always bound by their past decisions but can also depart from such decisions in some specific cases.[21] In the case of *Clement v Iwunayanwu*,[22] Oputa JSC explained doctrine of judicial precedent as a binding decision of higher court which is considered as an example for identical cases with similar facts in future. Also, in the case of *Sundralingam v Ramana thay Omg,*[23] Hock Thye FJ, stated that "Each court is of course bound by decision of the court above it." It is similarly the case in Singapore when Wee Chong Jin CJ, in the case of *Mahkah Yew v public prosecutor stated*:[24] "The doctrine of Stare decisis is a necessary and well established doctrine in our system of jurisdiction and our judicial system."

However, the doctrine of Stare decisis is said to operate well in the following three ways; firstly, if the part of earlier judgment in the earlier case being relied upon is the ratio decidendi of the case, secondly, if the earlier case involves fact that are not different from each other and thirdly, if the earlier case is a decision from the court of concurrent or inferior jurisdiction than the court faced with the case at hand.[25] For example, if earlier decision was given from a magistrate court, a judge of high court may disagree with earlier decision in his current decision if the facts of the case are similar.

1.5 Operation of Doctrine of Judicial Precedent or Stare Decisis

The doctrine of stare decisis operates in two ways namely;[26]

Vertical: this means that prior decision of a higher court is binding on the lower courts.

---

[18] Robert G ,Scofield, *"The Distingtion between Judcial Dicta and Obita Dicta"* <http://www,com.my/?gws_rd=ss/#q=what +is+the+difference+between+ratio+decidendi+and+obita+dicta> accessed 12 Aug 2015'

[19] Ibid

[20] Paton G.W.A, Text *book of Jurispudence,(*Oxford Claredon Press, 1946) 151.

[21] Illegbu E.A, Duru S.A & Dafe E.U, "Rationality of Judicial Precdent in Nigeria's jurisprudence",America International journal of Comtemporary Reasearch vol 4 No 5 may (2014) 150.

[22] (1988) 3NWLR pt (107), 54.

[23] [1967] 2 ML J 211 (Federal Court), 213.

[24] [1971] 1 ML J 1 (Singapore), 1

[25] Venugopel A. Vijayalashimo,124.

[26] Ibid , 125.

Horizontal: this means same court is bound to follow its own prior decision and prior decision of a court of the same level whether past or present.

The major reason for compliance with precedent is that a higher court in the superior cadre laid down the principle as applicable law. If lower court disobeys the principle, on appeal, the higher court can correct or reverse the decision of the lower court as was the position in the cases of Favelle *Mort Ltd v Murray*[27] and *Viro v R*[28] in the High court of Australiaf.[29]From the above, it can be understood that in practice, courts must abide by decisions of higher and other relevant court in the same hierarchy. However, decisions of superior court outside that jurisdiction are somehow not binding but may be followed.

1.6 Advantages of Judicial Precedent:

Operation of judicial precedent is said to have the following advantages:

Judicial precedent avoids waste of judicial effort and time for rethinking about solution to similar to similar problem previously settled.

It avoids arbitrariness in judicial decision during determination of cases.

It promotes predictability of judicial decision in cases with similar facts in court.

It encourages uniformity in judicial decisions.

It promotes certainty of applicable law whereby one is almost certain of the applicable laws to be used and the likely judicial decision in cases with similar facts in court.

Judicial precedent preserves the tradition of compliance and respect in the judicial system as the higher court has the power to correct or reverse the decision of the lower court.

Judicial precedent promotes uniformity in judicial decision.[30]

1.7 Disadvantages of Judicial Precedent:

Operation of judicial precedent is said to have the following disadvantages:

Judicial precedent does not encourage flexibility in judicial decision as all courts must abide by the principle of stare decisis in their decisions.

Judicial precedent lacks judicial autonomy. This observation is corroborated by the principle of stare decisis which states that any lower court that fails to comply with the applicable law and decisions laid down by the higher court shall have its decision corrected or reversed.

Judicial precedent is conservative as it does not allow for quick transformation and application of law in line with the changing situations in the society.

---

[27] (1978)8 ALR 649

[28] (1978) 18 ALR275.

[29] Ibrahim A, Joned.A, 68.

[30] Ogbu Osita. Modern System of Justice in Nigeria, (Ton Micro Publishers,Lagos,1995),51.

Judicial precedent focuses more on compliance with precedent rather than the quality of law and decisions it discharges .This makes the practice of precedent to be fraught with restrictions.

Judicial precedent is stereo typed in practice and this weakens the power for judicial independence and accountability among courts.[31]

2.0 Operation of Judicial Precedent in *Shari'ah* Courts in Malaysia

In Malaysia, the three types of courts comprise of the Civil Courts, the *Sharīah* Courts and the Native courts as earlier mentioned. The Civil Courts constitute of the Federal court, the court of Appeal and the High court as created under Schedule 9 of the Federal constitution of Malaysia. Under Civil Court, Judicial Precedent is known to be widely practiced. However, *Sharīah* courts at the state government level and Federal level were created under the Federal constitution 9th schedule,[32] while the native courts were created under 19th schedule item 13 of the federal constitution, in Saba and Sarawak. It has been reported in the case of *Sukma Darmaja Sasmitat Madja v Ketuah pengarah Penjara,* Malaysia and anor,[33] that these set of courts are administered in a parallel way as one court cannot interfere in the work of others. The *Sharīah* Court in Malaysia comprises of *Sharīah* Appeal Court, *Sharīah* High court and *Sharīah* Subordinate court. Even though, *Sharīah* Subordinate Court is under the administrative control of *Sharīah* High Court in the states in relation to judicial matters, all *Sharīah* ourts are independent and the doctrine of Judicial Precedent is not applicable in *Sharīah* Courts. This arrangement which allows for exclusion of Judicial Precedent from Sharia Courts presently remain in force in Malaysian Courts.[34]

2.1 Operation of Judicial Precedent in *Shari'ah* Court of Appeal and *Shari'ah* Courts in Nigeria

It has been observed that Nigeria also operates many types of court system which include Common Law Court, *Sharīah* Court and Customary Courts. Under this system, application of doctrine of judicial precedent is said to be limited to courts that practice common law system, while *Sharī'ah* Court of Appeal and the Area courts do not practice judicial precedent.[35] However, it has been found that by the virtue of appellate system, the *Sharī'ah* Court of Appeal follows the decision of Federal Court of Appeal and the Supreme Court of Nigeria, while Customary Courts and the Area Courts should follow decisions of high court.[36]

In accordance with provision of section 11(e) of the Constitution of Federal Republic of Nigeria 1999,[37] on creation of *Sharīah* Court of Appeal of each of the Northern states, the *Sharī'ah* Court of appeal of each of state is empowered to determine cases in accordance with Muslim Private laws. Therefore, in a situation whereby all parties in a case either Muslim or non Muslim, have agreed to the proceeding and by writing, agreed that their case be settled in accordance with *Sharīah*, such parties who have agreed to be bound by a particular law cannot come forward and request to be bound

---

[31] Venugopel .A. Vijayalasco, 123.
[32] Federal Court of Malaysia, Act 19, article 121-135.
[33] (1992) 2ML J 219 FC.
[34] See Ansari Abdul Haseeb, *"judicial precedent: An expository Study of Civil Judicial system and Sharia Court System"*, Jounal of Islamic Law Review Vol 3, (2007) pp 154-158.
[35] See Obilade, Akintunde Olusegun, (*The Nigerian Legal System, spectrum Books Limited Ibadan,* 2011, at 114.
[36] Ibid 116.
[37] Ibid,165.

by judicial precedent again. From the above, the doctrine of judicial precedent does not apply in *Sharīah* Court as the rules of *Sharīah* Courts do not acknowledge the doctrine. As such, each court must determine a case on its merit and make intellectual interpretation based on principles of Islamic jurisprudence. To strengthen the claim on exclusion of *Sharīah* Courts from applying Judicial Precedent, it has been reported that there were two prominent *Sharīah* cases that bothered on application of judicial precedent and application of judicial precedent in *Sharīah* Courts in those two cases was totally criticised. The first case was that of *Karimatu Yakubu Paiko & anor v Yakubu Paiko & anor*,[38] which bothered on the power of Ijba (the right of a father to marry off his virgin daughter without her free consent). In deciding this case, the Federal Court of Appeal cited an earlier decision of *Sharī'ah* Court of Appeal.[39] Subsequently, some scholars criticized the Federal court of Appeal for relying on the earlier decision of the *Sharīah* Court of appeal in reaching its own decision was a deviation from *Sharīah* principles and pointed that the prescription of the law on non applicability of judicial precedent in *Sharīah* Courts is clear.[40] In the second case of *Chamberlain v Abdullahi Dan Fulani*,[41] It was remarked by Gwarzo J, that in Islamic law, a judge is not bound by a precedent in a case which is similar and if a judge passed a judgment in a case, when a similar case comes, his judgment in the first case will not extend to the second case. Therefore, a fresh and independent examination is required under the rule of law by same judge or another. Further, it has been observed that Section 6 (3) of the constitution of Federal Republic of Nigeria (1999), has created hierarchy of courts including *Sharī'ah* Court of Appeal and stated that each court will have all the power of a superior court of record.

3.0 INFLUENCE OF JUDICIAL PRECEDENT OVER SHARIAH LAW

Despite citing the above instances and constitutional provisions on exclusion of Sharia courts from the practice of precedent, the fact that S. 240 of the Constitution of Federal Republic of Nigeria1999 provides for appellate jurisdiction of the Federal Court of Appeal over cases from *Shariah* Court of Appeal of states and makes the decision of Federal court of appeal binding on the *Shariah* Courtof appeal and all courts below it in Nigeria, The above appears to be seen as the provision establishing binding precedent on the *Shari'ah* Court of appeal. This can also be seen as the only limitation on the freedom of *Shari'ah* Court from precedent because according to S. 240 above, all appeal cases already decided under Sharia Court of Appeal would have to be retried and decided at the Federal Court of Appeal and this shall mostly be done according to judicial precedent. Comparatively, it can be said from the above analysis and relevant constitutional provisions for Nigeria and Malaysia that the practice of judicial precedent is not provided for under *Sharīah* law,[42] However, the emerging influence of judicial precedent over sharia cases at the Federal Court of appeal as provided under S.240 in Nigeria, calls for caution and action .

---

[38] (1969-1989) SH LRN 54 at 61 per Gwarzo JCA.

[39] See Ladan M,T, *Introduction to Jurisprudence, Classical and Islamic Law*,(Malt House Press Ltd 2006) ,202-295.

[40] Ibid

[41] (1989) SH LRN 54 at 60. For detail on Chamberlain v Abdullahi Dan Fulani, see Bello Aminu Adamu in his article,"Binding Precedent and Sharia / Islamic Law in Nigeria: An attempt at a Civil – Criminal Distinction."

[42] Said Adekunle Mikail & Mohammed Arifin. "Application of Doctrine of Judicial precedent in Sharia Courts", Social Science Research Network (2007) < paper ss.m . con / so/3/ paper /cfm 2 abstract-id=2405000>accessed on 8 June,2015.

Judicial precedent focuses more on compliance with precedent rather than the quality of law and decisions it discharges .This makes the practice of precedent to be fraught with restrictions.

Judicial precedent is stereo typed in practice and this weakens the power for judicial independence and accountability among courts.[31]

2.0 Operation of Judicial Precedent in *Shari'ah* Courts in Malaysia

In Malaysia, the three types of courts comprise of the Civil Courts, the *Sharīah* Courts and the Native courts as earlier mentioned. The Civil Courts constitute of the Federal court, the court of Appeal and the High court as created under Schedule 9 of the Federal constitution of Malaysia. Under Civil Court, Judicial Precedent is known to be widely practiced. However, *Sharīah* courts at the state government level and Federal level were created under the Federal constitution 9th schedule,[32] while the native courts were created under 19th schedule item 13 of the federal constitution, in Saba and Sarawak. It has been reported in the case of *Sukma Darmaja Sasmitat Madja v Ketuah pengarah Penjara,* Malaysia and anor,[33] that these set of courts are administered in a parallel way as one court cannot interfere in the work of others. The *Sharīah* Court in Malaysia comprises of *Sharīah* Appeal Court, *Sharīah* High court and *Sharīah* Subordinate court. Even though, *Sharīah* Subordinate Court is under the administrative control of *Sharīah* High Court in the states in relation to judicial matters, all *Sharīah* ourts are independent and the doctrine of Judicial Precedent is not applicable in *Sharīah* Courts. This arrangement which allows for exclusion of Judicial Precedent from Sharia Courts presently remain in force in Malaysian Courts.[34]

2.1 Operation of Judicial Precedent in *Shari'ah* Court of Appeal and *Shari'ah* Courts in Nigeria

It has been observed that Nigeria also operates many types of court system which include Common Law Court, *Sharīah* Court and Customary Courts. Under this system, application of doctrine of judicial precedent is said to be limited to courts that practice common law system, while *Sharī'ah* Court of Appeal and the Area courts do not practice judicial precedent.[35] However, it has been found that by the virtue of appellate system, the *Sharī'ah* Court of Appeal follows the decision of Federal Court of Appeal and the Supreme Court of Nigeria, while Customary Courts and the Area Courts should follow decisions of high court.[36]

In accordance with provision of section 11(e) of the Constitution of Federal Republic of Nigeria 1999,[37] on creation of *Sharīah* Court of Appeal of each of the Northern states, the *Sharī'ah* Court of appeal of each of state is empowered to determine cases in accordance with Muslim Private laws. Therefore, in a situation whereby all parties in a case either Muslim or non Muslim, have agreed to the proceeding and by writing, agreed that their case be settled in accordance with *Sharīah*, such parties who have agreed to be bound by a particular law cannot come forward and request to be bound

---

[31] Venugopel .A. Vijayalasco, 123.

[32] Federal Court of Malaysia, Act 19, article 121-135.

[33] (1992) 2ML J 219 FC.

[34] See Ansari Abdul Haseeb, *"judicial precedent: An expository Study of Civil Judicial system and Sharia Court System"*, Journal of Islamic Law Review Vol 3, (2007) pp 154-158.

[35] See Obilade, Akintunde Olusegun, (*The Nigerian Legal System, spectrum Books Limited Ibadan,* 2011, at 114.

[36] Ibid 116.

[37] Ibid,165.

4.0 CONCLUSION

From the above, the definitions of Judicial Precedent have been examined. The types of Judicial Precedent, the principle of judicial precedent, the doctrine of Judicial Precedent, operation of doctrine of Judicial Precedent as well as advantages and disadvantages of Judicial Precedent have been discussed. The paper further made a comparative analysis on the application of Judicial Precedent in Shariah Courts in Malaysia and Nigeria, In respect of practice of precedent among the Shariah Courts in Nigeria and Malaysia,, it is observed that the Shariah Court of Appeal in Nigeria and the Shariah Courts in Malaysia are not bound by judicial precedent.[43]Therefore, the two countries do not practice precedent in their Shariah courts. It is similarly observed thatthe doctrine of judicial precedent is not applicable in the *Sharīah* Courts and the Native/ Customary Court in Malaysia and Nigeria. However; the emerging influence of Judicial Precedent over Sharia appeal cases at the Federal Court of Appeal in Nigeria calls for caution and necessary action.Based on the above, it is hereby recommended that more autonomy should be granted to Shariah Courts, while relevant legislation should be strengthened to see that Shariah Courts in Nigeria and Malaysia discharge their functions according to Shariah provision rather than common law precedent.

REFERENCES

1.Byrant A. Garner (ed) (2004) Black Law Dictionary 8th edn Thompson West.

2. Chuks Maduka, (2010)Understanding the Concept of Judicial Precednt ann the Doctrine of Stare Decisis under the Nigrerian Legal System,Nigerian law blog spot .com/2010/08/understanding.concept-of-judicial_20_h+mc.

3..Esein J.O,(1998) Introduction to Nigerian Legal System, Ibadan Sam Bookman publications.

4. Hamza W.A. Bulan R, (2003) An Introduction into Malaysian Legal System.Malaysia, Oxford Fajar Sdn Bhd.

5. Ibrahim A, Joned A, (1995) The Malaysian Legal System,Kualar Lumpur,Deman Bahasolan pustaka

6. Ikegbu.E.A, S.A Duru & Dafo E.U,(2004) Rationality of Judicial Precedent in Nigeria's Jurispudence, American International journal of contemporary research,vol 4 no5.

7.Ladan M.T, (2006) Introduction to Jurispudence, Classica and Islamic Law,Malt House Press Ltd.

8..Obilade Akintunde, (2007) The Nigerian Legal System, Ibadan,SpectrumBooksLtd

9.. Ogbu Osita,(1995), Modern System of Justice in Nigeria ,Lagos, Tona Micro Publishers

10. Paton G,W.A, (1946) Text Book of Juripudence, Oxford,Claredon Press.

11. P.U Umoh,(2010) Precedent in Nigerian Courts,Fourth Dimension Publishing Coy.

12. Said adekunle Mikail &Mohamed Arifin,(2013) Application Of Doctrine Of Judicial Precedent in Sharia Courts, Social Science Research Network < papper ss.m .con /so/3/paper cfo 2 abstract-id =2405000 > accessed 18/1/2015.

13. Vijayalakshmi A. Venupogal,(2011),Introduction to Law in Malaysia, Malaysia,Sweet Maxwell publications.

[43] Ladan, M.T, Introduction to jurisprudence, 285.