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APPLICATION OF ISLAMIC PERSONAL LAW AND THE JUDICIAL PROCESS IN ADAMAWA STATE: ISSUES AND CHALLENGES*

BY

MAGAJI CHIROMA**

ABSTRACT

This paper has been targeted at addressing the issues and challenges bedevilling the application of Islamic Personal Law (IPL) within the Adamawa State judicial process. Thus, attempts have been made through employment of doctrinal and empirical methods of data collection to identify certain peculiar challenges that were premised on issues related to judicial structure, court administrative control, rules of procedure and evidence, manpower and expertise. In the end, the paper among other things recommends the amendment of the relevant state laws so as to pave way for restructuring of the state judiciary; by placing all the state Area Courts under the supervision of the Grand Kadi of the Sharia Court of Appeal (SCA); and by expanding the jurisdiction of the state District Courts to entertain civil matters other than IPL.

1. INTRODUCTION

The application of Islamic law is not a new phenomenon within the context of the Nigerian legal system. Before the advent of British colonial administration in Northern Nigeria, Sharia Courts were established and constituted by learned Kadis (*Alkalai*) to entertain all civil and criminal matters in the society. This has been the practice continuously until the period of the colonisation, where some changes began to manifest with gradual abrogation of some aspects of Islamic law (especially the criminal aspect); thereby subjecting it to the

* This is an expanded (a reviewed) version of the paper delivered at the Annual Week of Muslim Lawyers Association of Nigeria (MULAN), Adamawa State Chapter, held on the 8th day of October, 2022 at Admiral Murtala Nyako's Hall, Office of the Head of Service, State Secretariat, Adamawa State, Yola, Nigeria.

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British concept of repugnancy test, compatibility test and that of public policy. To that effect, the application of Islamic law by the courts, especially during and after the colonial administration, has been reduced and limited to Islamic Personal Law (IPL). However, the application of IPL has been manifested in the Constitution of the Federal Republic of Nigeria (1999) which also confers on the Sharia Court of Appeal the specific judicial power to entertain civil matters involving all questions of IPL. While on one hand it is incumbent upon all Muslims to be governed by the IPL as inferred from the letters and spirit of the Constitution, on the other hand, the states are conferred with discretionary powers to establish Courts which can entertain IPL within its peculiar judicial system. Hence, as a result, various states in the federation have had divergent experiences on the application of IPL, especially within their peculiar judicial process. Most of these experiences have directly or impliedly faced by varieties of challenges connected with issues bothering on hybrid system, courts settings/judicial structure, court administrative control, rules of procedure and evidence, manpower and expertise among others. Thus, it is against this backdrop that this paper appraised the issues and challenges bedevilling the application of IPL and the judicial process in Adamawa State. While discussion has been preceded on the meaning, scope and legal basis of IPL, the paper has focused mainly on identification and explanation of some issues and challenges bedevilling the system. In the end, the paper outlined some recommendations as contained in the conclusion.

2. ISLAMIC PERSONAL LAW IN NIGERIA: MEANING, SCOPE AND LEGAL BASIS

The term Islamic Personal law has been conceived to mean “Islamic law of personal status” which regulates and deals with specific Muslim personal matters. This meaning of IPL has been derived from the provision of the Constitution of the Federal Republic of Nigeria FRN (1999), various legislations and judicial pronouncements. In the Constitution, the meaning of the term IPL can be inferred from the provision of sections 277 and 262 of the Constitution, which provides for the appellate and supervisory jurisdiction of the SCA of the States

and Federal Capital Territory respectively.¹ It has been paraphrased thus:

The Sharia Court of Appeal shall be competent to decide:
(a) any question of Islamic personal law regarding marriage, divorce, custody and guardianship of an infant;
(b) where all the parties to the proceedings are Muslims, any question of Islamic personal law regarding a marriage, including the validity or dissolution of the marriage, or regarding family relationship, a founding or the guarding of an infant; (c) any question of Islamic personal law regarding wakf, gift, Will or succession where the endower, donor, testator or deceased person is a Muslim; (d) any question of Islamic personal law regarding an infant, prodigal or person of unsound mind who is a Muslim or the maintenance or guardianship of a Muslim who is physically or mentally infirm; or (e) where all the parties to the proceedings, being Muslims, have requested the court that hears the case in the first instance to determine the case in accordance with Islamic personal law, any other question.²

From the foregoing statement, one can easily and correctly deduced the meaning, scope and the legal basis of the IPL. It is a law regulating any question regarding marriage, divorce, custody and guardianship of an infant, waqf, gift, inheritance and/or bequest, question regarding maintenance or guardianship of an infant, prodigal or person of unsound mind or the maintenance or guardianship of a Muslim. All these are exclusively Islamic personal matters which fall under the jurisdiction of SCA.³ Furthermore, to have a better understanding about the meaning and scope of IPL, the Supreme Court (SC) in the locus classicus case of *Magaji v. Matari*⁴ drew a line of demarcation between the dispute in question and matters of IPL listed under section 277(2) of the 1999 Constitution. Thus, it held that the dispute in question cannot fit in any of the matters listed under section 277(2) of the 1999

¹ See Sections 277(2) and 262(2) of the Constitution FRN (1999)

² Ibid, see also the Laws of Northern Nigeria CAP 136, 1960

³ Abdulmumini Oba and Ismael Saka Ismael, "Challenges in the Judicial Administration of Muslim Estates in the Sharia Courts of Appeal in Nigeria", Electronic Journal of Islamic and Middle Eastern Law, Vol. 5 (2017) 84

⁴ *Magaji v. Matari* (2000) 8 NWLR (pt.670) p.723 at 727