EXPLORING *SULH* IN ISLAMIC CASES: TOWARDS ENHANCING ADMINISTRATION OF JUSTICE IN SHARIA COURTS IN NIGERIA

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Abstract

The origin of *Sulh* is as old as Islam itself, because it came along with Islam. The treaty of Hudaybiyyah is the classical example of the practice of sulh in Islam where it was initiated between Prophet Muhammad (PBUH) and the representatives of the Makkah oligarchy. Just like the conventional ADR where the advantage outweighs the disadvantage, so also sulh have far reaching advantage than litigation. The concept enhances and restores cordiality, mutuality and forbearance among the disputants and of course it saves time and cost for parties and courts. Considering this therefore, it is apposite that Sulh in Islamic cases should be encouraged and employed with a view to enhancing and speeding the administration of justice in our Sharia courts. In using the doctrinal methodology, the Qur'an and Hadith were consulted, the secondary source was also consulted and other sources of Islamic law. This article finds that the practice of Sulh is facing some challenges because it is not encompassed in any law, like the way the Sharia Penal Code law, Sharia Court Law and Sharia Court (Civil Procedure) Rules were legislated because those items fall within the legislative competence of the State Houses of Assembly. This article recommends among others, that the Sharia Alternative Dispute Resolution Law and Rules based on Islamic law be made by the States implementing Sharia to further strengthen the practice of sulh in our Sharia Courts.

Keywords: *Sulh, Sharia*, *Tahkim, Muhtasib, Fatwa, Mufti*

1.0 Introduction

The acronym 'ADR' is known Alternative Dispute Resolution. It is a dispute solution process and techniques that acts as means for the disagreeing parties to come to an agreement short of litigation[1]. It is a collective term for ways through which conflicting parties can settle disputes with or without a third party. It is intended to serve as an alternative to the conventional court processes that is too burdensome and cumbersome.

The rising popularity of ADR in the recent time is not unconnected to the increasing case loads, delays in the conventional courts, the perception that ADR imposes fewer costs and lesser time than litigation, a preference and desire of the parties to have inputs in choosing individuals who will join them to decide their disputes[2]. It is safe to posit that ADR as universally accepted and in indeed the legal profession as an ease means of dispute resolution with components such as arbitration, mediation, conciliation and negotiation. Islam has also recognised these components referred to as *Sulh* (negotiation, mediation and conciliation), *Tahkim* (arbitration), *Muhtasib* (ombudsman) and *Fatwa* of *Mufti* (expert determination).

Dispute between individuals is inevitable owing to the nature of transactions they engage with each other. In the circumstance, dispute is mostly bound to arise in the course of living together as family, tribes, communities, political parties, institutions, religious bodies, business partners. The imperative intermingling of man and their interaction among themselves makes dispute and disagreement inevitable.

Whenever dispute or disagreement arises in day to day activities of man, the disagreement could be managed. ADR is the faster mechanism that can be used to resolve the disagreement in order avoid

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[1]Gianna Totaro, 'Avoid Court at all costs' (2008) The Australian Financial Review available at http//www.afr.com>…>professional services accessed on the 20th July, 2022

[2] Peter Dele, ADR in Nigeria: Principles and Practices (Lagos: Sege Nigeria Ltd, 2004) P. 30

the tendency of resulting into bloody clashes and wars of which the consequences are bitterly painful, regrettable and of adverse effects with irreparable loss, damages, hardships and acrimony. In order to checkmate disputes in whatever form individual, societal, tribal, political, commercial, environmental, local or international, there must be a thoughtful and well researched approach to bring about peace and resolution between the disputing and warring parties, communities or nations.

Alternative Dispute Resolution is a dispute solution process and technique that acts as means for the disagreeing parties to come to an agreement short of litigation. It is a collective term for ways through which conflicting parties can settle disputes with (or without) a third party. It is intended to serve as an alternative to the conventional process. The rising popularity of ADR in the modern days can be explain by the increasing case loads and delays in the traditional courts; the perception that ADR imposes fewer cost and lesser time than litigation, a preference and desire of the parties to have inputs in choosing individuals who will join them to decide their disputes. ADR has gained a widespread acceptance among the general public and the legal profession in the recent years. The main components of ADR are arbitration, mediation, conciliation and negotiation. And this is so even under the Islamic law.

Sulh as a contract has certain essential ingredient that make up a valid *sulh* under the shari'ah. There must be *al-Musalih lahu* (one who makes declaration of claim), *al-Muslaihu alihi* (one against whom the claim is made), *al-Musalihu anhu* (subject matter in respect of which the claim is made), *al-Musalih bihi/Badl al-Sulh* (the object offered for the *sulh*/consideration), *ijab* (offer) and *Qubul* (acceptance).

The *al-Musalih lahu and al-Muslaihu alihi* (i.e the two contracting parties) should be persons who have the legal capacity to surrender their right, donate or make gift and not otherwise. According to this principle,*majnun* (insane), minor, a guardian over orphan's property, an administrator over endowment fund *(waqf)* shall have no legal capacity to validly enter *sulh* under the Islamic law.

On *al-Musalihu anhu* (subject matter), such must be of value and lawful. This can be subject matter concerning disputes involving monetary claims, property, marriage, divorce and lots of other civil cases except the *Hudud* cases. While *al-Musalihu bihi* (consideration)

has to be an object or anything tangible upon the parties to the *sulh* agreed to be given as consideration in place of the right forgone by way of *sulh.* The object must be valuable and beneficial.

Sulh like any other contract in Islamic law also recognizes offer and acceptance. The offer as well as the acceptance must be conveyed in any expression that clearly illustrates the consensus *ad idem* of the conflicting parties.

2.0 Historical Background of *Sulh* in Islamic Law

Alternative Dispute Resolution is a derivative of an Arabic word referred to as *Sulh*. It is the most common aspect of *Maqasid al-Sharia* which derived it existence from the Holy Quran supplemented by the *Sunnah* of the Prophet Muhammad (SAW) and the consensus of the Islamic Jurists known as *ijma*[3].

The concept was first practiced during an incident that happened at a place called *Hudaybiyyah*, a town between Mecca and Medina. The incident that led to the practice of *Sulh* by the Holy Prophet Muhammad was when he wanted to perform lesser hajj (*umrah*) after he had been forced out of Mecca and migrated to Medina. This incident took place toward the end of the sixth year of the *hijrah*; the Prophet left Medina with a party of about 1400 to 1500 men. When the Meccans heard of the Prophet approaching Mecca for the lesser hajj, they decided to oppose the entry of the pilgrims by a strong armed forces under the leadership of Khalid Bin Walid who two years after this incident embraced Islam[4]. When our noble Prophet heard of this, he returned and settled at a place called *al-Hudaybiyyah*. At this place, the representatives of the Meccan oligarchy met with the Muslims and they both decided to conclude a truce and in that circumstance, a treaty was drafted that all warfare between Mecca and Medina be suspended for ten years; that no entrance to Mecca by any of the disciples for that year, that any Meccan citizen who come over to the Prophet must be sent back to Mecca but if the person is from the Prophet's side such person will not be sent back. The last statement though, has not been

[3] IA Haroon, 'The Use of Alternative Dispute Resolution (Sulh) in Sharia Cases' (2017) being a paper presented at the Workshop for Area/Sharia/Customary Courts organized by the National Judicial Institute available at http/www. Nji.gov.ng>workshop-papers>…
[4] ibid

well for the Muslims, but for the spirit of peace, the Prophet still agreed and stood by its pursuant to the Qur'anic verse that there shall be no compulsion in matter of faith[5].

This treaty of *Hudaybiyyah* became a great event in the annal of history of Islam. For the first time, peace and tranquility flourished between Meccans and Medinas. Islamic ideals penetrated the Arabian Peninsula springing up unity between the communities which later prepared for the victory of Islam. The entrance of the Prophet to the city of Mecca the following year for pilgrimage with his disciples without hostility or resistance. This truce ushered in the moral and political victory for Islam over all the Arabians.

Both the Qur'an and during the formative period of Islam, the principle of mediation and reconciliation were adopted as the preferential mechanism for settlement. They were drawn from pre-Islamic custom and are alluded to in many of the sayings and deeds attributed to the Prophet of Islam (PBUH), Sahabas and the Imams alike. Indeed, many *ahadith* have revealed how legal mechanism were employed by the Prophet (SAW) and the companions as the foremost method of settling disputes despite the fact the Islamic judicial system had been entrenched and the notion of executive judgment (referred to as *al-qada*) was finally consolidated in the Abbasid era[6].

From this history, it safe to conclude that *Sulh* predates the English model ADR that was lunched and establishes in 1945 by the United Nations. The Islamic ADR was in existence as far back as the sixth year of *hijra* calendar which is now about 1443 years[7].

3.0 *Sulh* (ADR) in the Context of Sharia

Prior to the intrusion of the British administration in Nigeria, Islamic law has been in existence and been perfectly practiced by the Muslims in the North. The codes of conduct regulating all their transactions were based on the principles of Islamic law. In the field of criminal law, the Qur'an, Hadith and other sources have provided for the Islamic law of crimes and tort known as *al-uqubat* and Daman. While for the

[5] Quaran 2:256

[6] Justin Jones, Muslim Alternative Dispute Resolution: Tracing the Pathways of Islamic legal Practice Between South Asia and Contemporary Britain P. 2 available at http//www.tadfonline.com>doi>abs accessed on 19th July, 2022

[7] IA Haroon, (n-4).

commercial transactions, their business and commercial activities were also conducted on the basis of the principles of Islamic law known as *al-mu'amalat*. It was on this basis that, the appointment of an Emir was based on his proficient knowledge and been versatile in Islamic law. The Emirs who were the judges decided and reconciled parties through the ADR (*sulh*) in certain cases based on the principles of Islamic law. However, upon their arrival, the British administration through so many constitutional developments and policies abolished the practice of Islamic law especially the Islamic law of crimes and further classified Islamic law as part of the customary law.

It is interesting to note that ADR practice is not an alien concept in Sharia. It is too wrong to have any one with perception that Islamic law does not recognize ADR. This notion is actually attained because of lack of comprehensive knowledge and understanding of Islamic law. Sharia is a universal and accomplished law which needs no emphasis. This is evident from the fact that, Islam for centuries before the modern civilization brought by the imperialists was the torchbearer of learning, sciences and scholarship. It was a well-established system of religion, governance, politics, economics and adjudication[8].

In Islamic law, it will be proper if option of ADR is given priority and made a condition precedent before accepting any case for trial by Sharia Courts. The conventional courts have made ADR an important factor to be considered before commencement of proceedings. For instance, Order 3 Rule 11 of the Lagos State High Court (Civil Procedure) Rules, 2012 mandated the Registry to screen any originating process filed for suitability for ADR and refer same to Multi House Door or other appropriate ADR institutions or practitioners. This shows that ADR mechanism and procedure in the conventional courts are essentially intertwined and that the legal system in countries who have relied on a traditional model of dispute resolution are more efficient than those who have opted out from spirit of ADR. It is believed that in Islam, ADR has religious sanctity because its practice has basis from the Quran and Sunnah as well as the time of *Sahabas* and beyond. Based on what we have, some States in the Northern Nigeria are reintroducing the practice of Islamic law, they implemented *Sharia* and have components such as *Muhtasib* (ombudsman) and *fatwa* of *Ulamas*. Thus, like the Kano State, they have the *Hisba* Board

[8] Ibid

whose mandate is basically on *amr bil ma'aruf wanh anil munkar*[9] and on that basis they settle disputes of family nature ranging from matrimonial causes, inheritance and others issue under the Islamic personal law.

4.0 The Legality of ADR Processes under the Sharia

ADR processes have found it basis both from the holy Qur'an and *Hadith* of the Holy Prophet Muhammad (PBUH). Islamic law has four ADR processes to wit; *Sulh, Tahkim, Muhtasib* and *Fatwa* of *Mufti*[10].

4.1 Sulh (Negotiation, Mediation and Conciliation)

According *al-Nawawi*, the word *sulh, al sulah,and al-musalahah* originated from the word *saluha* or *salaha* as says', a verb that explains the process of restoring something. Although, sulh and islah denotes almost the same meaning, *sulh* is popularly used than *islah*[11]. *Sulh* is an agreement that involves offer and acceptance, arises only if there is a dispute, initiated by a neutral third party and both the disputants enter into it with consent[12]. The shafi'i termed this as *sulh al-hatiah*. In this type of *sulh*, the plaintiff waiver his right totally or partially. This *sulh* is a form of *hibah* or gift. Therefore, all rules governing *hibah* will be applicable, (b) *sulh al-mu'awada*- in this type of *sulh* the plaintiff agrees to accept a consideration *(iwad)* in place of his right or allegation. This involved agreement to replace the subject matter in dispute. Therefore, the rules regarding contract of sale will be applicable.[13]

The concept of *sulh* in the *sharia* sense means a contract that is concluded by two parties under which each party waives part of his right for the purpose of arriving at a mutual and final resolution of a conflict.[14] *Sulh* represents one of the methods of conflict resolution under *Maqasid al-Sharia* (objectives of Sharia) and it is attained

[9] Enjoining what is right and forbidding what is wrong (see Qur'an 3: 104)
[10] IA Haroon, (n-8)
[11] Muhyi al-Din Abu Zakaria Yahya, Tahrir Alfaz al-Tanbih, P. 201 in SB Ahmad, Sulh: Alternative Dispute Resolution and Amicable Settlement of Family Dispute (2015) UMRAN Journal of Muslim affairs vol. No. 1 available at http//.www.researchgate.net>publication>27… accessed on 21st July, 2022.
[12] Ibid
[13] Ibid
[14]IA Haroon (n-11)

through mediation and conciliation which may be facilitated either by a Qadi or prominent members of the family or community. By this, it means the principle involves the principles of counseling, advising and arbitration.

The basis of Sulh was found in the Holy Qur'an. Thus it says: "The believers are but a single brotherhood, so make peace and conciliation between two (contending) brothers, and fear Allah that ye may receive mercy"[15].

In yet another verse, Allah says: "If two parties among the believers fall into quarrel, make ye peace between them both…then make reconciliation between them with justice and fair, for Allah loves those who are fair and just"[16].

The Holy Qur'an in it divine wisdom encourages *sulh* between husband and wife where there is disagreement in their marital relationship and in that situation it divinely provided a solution that settlement is the best. It says:

> "And if a woman fears from her husband contempt or evasion, there is no sin upon them if they make terms of settlement between them-and settlement is best…[17]"

The above verses firmly encourage the practice of dispute resolution generally between warring parties on equitable, just and fair manner. Allah in His benevolent mercy promises a divine reward for those who resolve dispute between disagreeing parties. Another verse that also legalized *sulh* is a verse where undue secrecy which is otherwise disapproved is being allowed by Allah for the sake of reconciliation. It provides thus:

> "No good is there in much of their private conversation, except for those who enjoin charity or that which is right or conciliation between people. And whoever does that seeking means to the approval of Allah –then we are going to give him a great reward.[18]"

[15] Qur'an 49: 10
[16] Qur'an 49:9
[17] Qur'an 4:127
[18] Qur'an 4: 114

In support of this verse, Prophet (SAW) was reported to have said that "he who makes peace (sulh) between the people by inventing good information or saying good things (in his attempt to please the disputants) is not a liar.[19]"

In strengthening the spirit of *sulh* under the *Sharia*, Justice Haroon viewed that reconciliation between the conflicting parties can cause postponement of *salat* (prayers) which is timely obligatory. This shows the importance attached by Islamic law to conflict resolution and dispute settlement[20]. The Prophet narrated the rewards awaiting the promoters of dispute resolution that

> "There is a sadaqah (charity) to be given for every joint of human or body (which numbers 360) and for everyday in which the sun rises there is a reward for one who establishes reconciliation and justice among people[21]."

The Prophet (PBUH) upheld the cause of *sulh* at a very critical situation even when derogatory reactions were casts against his noble personality and his mission. It was reported that "when Allah's apostle concluded the peace treaty of Hudaybiyyah, Ali Bin Abi Talib was to put into writing; at the opening chapter of the document, he wrote" between Muhammad; Allah's Messenger .." the non –Muslims objected that part claiming if he (the Prophet) is an apostle of Allah they would not fight with him. Allah's messenger asked Ali to delete that statement while Ali decline saying that he will not be the one to rub it off. The Prophet (PBUH) rose and rubbed it off in the interest of peace and settlement.[22]"

Another significant history attached to settlement of dispute and conflict is what was documented in the famous letter of Umar bin al-Khattab (the second Caliph of the Prophet) to Abu Musa al-Ash'ariy on the letter of appointment as a Qadi (Judge) which contains numerous injunctions relating to the administration of justice. One of the clauses about *sulh* in the letter reads thus *"all types of compromise and*

[19] M Muhsin khan: Sahih Al-Bukhari (English Translation), Vol. 3 P. 533
[20] IA Haroon, (n-15).
[21] M Muhsin khan: Sahih Al-Bukhari op. cit. P. 536
[22] Ibid, P. 533

conciliation among Muslims are permissible except those which make haram halal (unlawful lawful) and halal haram (lawful unlawful).[23]"

4.2 *Tahkim* (Arbitration)

It is an often voiced maxim that while Western law is based on the application of objective principles and weighing of competing interests between parties, Sharia emphasizes contextual application and places greater on the principle seeking conciliation via the negotiation of consensual agreement. Central to procedures of dispute resolution according to Sharia are the principles of *sulh* (mediation) and *tahkim* (arbitration). Note however that each is mutually distinct. Sulh denotes the attempt by a third party to encourage conflicting parties to move towards their own settlement of a dispute[24]. While *tahkim* (arbitration) refers to a third party taking responsibility for evaluating a dispute and deciding upon the correct outcome[25]. However, Islamic scholars and academics have admitted that the two blend into each other in practice, to the extent that some speak of the hybrid concept of mediation-arbitration (or 'Med-Arb') to convey the fluid nature of the duties taken on by a third party negotiator[26].

Arbitration was known and it has been in practice in Islamic law. Dealing with *tahkim*, the Qur'an enjoins parties in marriage contract to appoint arbiters for the purpose of settlement in event of misunderstanding between them, it says:

> If ye fear a breach between them (husband and wife), appoint (two) arbiters, one from his family and the other from hers; if they wish for peace, Allah will cause their conciliation; for Allah hath full knowledge, and is acquainted with all things."[27]

From the Hadith, it was reported that our noble Prophet Mohammed recognizes *tahkim* (arbitration). In one reported Hadith, it was reported that the prophet appointed an arbitrator and also advised the tribe of

[23] AA Fayzee, 'Modern Approaches to Islam' P. 41-46
[24] Justin Jones, (n-6) P. 2
[25] ibid
[26] ibid
[27] Qur'an 4:35

Bani Qarnata to have their dispute arbitrated.[28] However, in Islamic law, for a person to be qualified as an arbitrator, he must be of knowledge, honesty, fear of Allah and competence.

4.3 *Muhtasib* (Ombudsman)

Muhtasib is actually what is conventionally known as Public Complaint Commissioner which has now become an indispensable tool of government in many countries including Nigeria. The institution of Ombudsman emerged in its present form in Sweden in 1809. While in England, it had its Ombudsman under the Parliamentary Commissioner Act, 1967. The role of the Commission is to adjudicate between private person and any governmental or statutory agency[29]. Since sulh (ADR) include such alternative processes that settle civil disputes out of court, the institution of Ombudsman is naturally included within ADR.

In Islamic law, *Muhtasib* is equivalent to Ombudsman. It or his functions include account taking (*hisbah)* of such matters like weight and measures, quality of commodities on sale in markets, honesty, trade and commerce, observance of modesty, in public places and such other things both temporal, that his, his functions are dispute avoidance and dispute resolution, and also to maintain morals.

The institution of Muhtasib had it basis from the Holy Qur'an and among the verses is chapter 3verse 104 which provides thus:

> "Let there arise out of you, a band of people enjoining what is right, forbidden what is wrong and believing in Allah"

It was reported that the Prophet Muhammad (PBUH) has appointed Sa'ad Ibn al-As Ibn Ummayyah as muhtasib of Makkah and Umar Bn al-Khattab of Madinah. Abdullahi bn Utbah al-Mas'ud was appointed the *muhtasib* of Madinah during the reign of Umar bn Khattab[30]. The duty of *muhtasib* under the Islamic law is enormous because it is related to the Islamic duty of enjoining what is right and forbidding what is wrong. In view of this, the *Muhtasib* is empowered to lay down codes

[28] AH El-Ahdab: Arbitration with the Arab Countries 2[ed] (the Hague: Kluwer Law International law, 1997) P.17
[29] IA Haroon, (n-21).
[30] IA Haroon (n-21)

of conduct regulating different activities within his territorial domain[31]. Supporting the enormousness of the role of *muhtasib* under the shari'ah, sheikhul Islam, Ibn Taymiyyah, explained that the duties of muhtasib encompass areas not covered by Qadi or Governor[32].

The office of *al-muhtasib* under the Islamic law is a useful tool in dispute resolution and dispute avoidance. The powers vested in that office are wider than those enjoyed by the Western Ombudsman set up in some countries including Nigeria where they have Public Complaint Commission.

It is to be noted that, the institution of *Hisba* set up by some Muslim majority States in the Northern Nigeria is the classical example of the institution of *Muhtasib* (Ombudsman). With the return of constitutional democracy visa-vis the legislative competence of the States Houses of Assembly, those Muslim majority States in dare need to revive the strict application of Islamic law enacted the Sharia Penal Code Law. For the purpose of compliance, they established institution of *Hisba* with the Qur'anic mandate of enjoining what is right and forbidding what is wrong. Among those States, Zamfara State was the first State that has set the precedent after which eleven states in the North followed suit and in all these States they have this institution of *Hisbah* who are religious law enforcement agent. As law enforcement agents, they have the responsibility to bring about sanity in the market, schools and the society at large[33].

4.4 Fatwa of *Mufti* (Expert Determination)

Expert determination is the process where parties to a dispute entrust it to some experts for evaluation in view of the technical nature of the dispute. The evaluation or the verdict given by the expert or scholar is of persuasive value only, and not binding.[34] The mufti or scholar gives his verdict or opinion in connection to the dispute which the parties

[31] Mushtaq Ahmad, Business Ethic in Islam (Islamabad: Islamic Research Institute, 1995) Pp. 136-138 in IA Haroon, 'The Use of Alternative Dispute Resolution (Sulh) in Sharia Cases' (2017) being a paper presented at the Workshop for Area/Sharia/Customary Courts organized by the National Judicial Institute available at http/www. Website incomplete.

[32]Ibn Taymiyyah, Al-Hisbah Fil al-Islam wal wazifatul al-Hukkam al-Islamiyyah (Mediana University) in IA Haroon ibid.

[33] Zamfara Hisbah Commission (Establishment) Law, 2003

[34] IA Haroon, (n-34).

brought before him. The classical example of this ADR process is the role of our Islamic clerics on given verdict settling disputes on marriage, divorce, inheritance and other family law issues.

5.0 Factors Warranting *Ṣulh* under the Islamic Law

Islamic law provided for situations under which *sulh* is recommended. Where a case is presented before *Qadi* and thought it wise that such a case is one that can be easily dispose of through ADR, the *Qadi* or a judge can advise the parties to subscribe to *sulh*. However, it should be noted that though, *shari'ah* always recommends and encourages parties to settle their differences but it also prohibits a judge to force one or both of the parties to succumb to *sulh* against his or their will. The *Qadi* should not persist on *sulh* unless with the agreement from both sides.[35]

Under the shari'ah parties may incline to sulh in any of the following situations:

(a) Where the litigation is such that may likely stain blood relationship among the disputants tied by kinship. Khaliph Umar bn Khattab was reported to have said that *"avoid litigation among people tied by kinship. Litigation among them causes animosity."* If the parties accept the advice to employ means of settlement, it is better. But where one or both of them reject the settlement, the Qadi is left with no option that to continue the case until judgment.

(b) Where each of the parties to the case is able to present his evidence but the other evidence so presented are on equal weight or strength when put on a scale of justice, both appeared to be same in terms of proving claim and denial, then Qadi or judge may advice for settlement out of court.

(c) Where the parties are influential, *sulh* is recommended to avert the breach of peace.

(d) Where the parties are learned, prominent and respected persons in the locality with large followers, the judge or Qadi may advise for settlement out of court.

[35] Ibid in Ashanqitiy A, Mawahid al-Jalil min Adilat al-Khalil (Beruit: Al-Maktab al-Ilimiyyah, 2004) vol.4 P. 54-55

(e) Where the case before the court consist of an influential and a weaker litigant who may not be able to derive the fruit of the judgment due to the influence of the other party, the judge in this situation may advise for settlement but on condition that the judge does not appreciate the nature of the litigation or that the two parties consent to making peace.

(f) Where the case is complicated due to legal issues or intrigues involved thereon[36].

6.0 The Application of *Sulh* (ADR) by the Sharia/Area Courts in Shari'ah Cases

The jurisdiction of the sharia court to entertain matters relating to Islamic personal law provided by the constitution of the Federal Republic of Nigeria, 1999 (as mended) is certain which leaves no room for any argument. On the basis of this, Sharia Court of Appeal was established[37] with both appellate and supervisory jurisdiction. It has power to entertain appeals from either sharia court or Area Court, as the case may be. Note that, in the North, two different lower courts exist under the Sharia Court of Appeal. Thus, in the States where Sharia was introduced, Area Court was repealed and replaced with Sharia Court. But in the other States where Sharia was not introduced, what they have is Area Courts. Appeals from the Sharia/Area Court lie to the Sharia Court of Appeal. However, appeals from the Area Courts to the Sharia Court of Appeal are limited to matters relating to Islamic Personal law. With the reintroduction of Sharia, the Sharia Court of Appeal has been conferred with additional jurisdiction to entertain appeals in both civil and Islamic criminal matters.

It is to be noted that, Nigerian Muslims are predominantly Maliki School followers; and in the light of this, the Sharia/Area Courts and Sharia Court of Appeal including the Court of Appeal and Supreme Courts on Islamic personal laws adopt the Maliki School jurisprudence. To this end, the Maliki School permits and gives room for parties to resort to sulh. Thus, the Sharia Court of Appeal Rules of Katsina State has given the court the power with the consent of the parties to refer the proceedings to an arbitrator. The provision reads thus *"a court may with the consent of the parties to any proceedings order the*

[36] Ibid
[37] CFRN, 1999 (as amended), s.277

proceedings to be referred for arbitration to such person or persons and in such manner and terms as it thinks is just and reasonable[38].

The above section clearly gives the Sharia Courts in Katsina State the power to advice the parties before it to settle their matter by means of sulh; or may with the consent of the parties; refer their dispute to a professional arbitrator for amicable settlement. In a bid to swing this section into action, a sulh –door (a counter part of the Multi Door Court) was introduced in Katsina State which provided the legal basis and guidance on the conduct of sulh in Katsina State Sharia Courts and Kano State[39]. Thus, Order 11 of the Kano State Sharia (Civil Procedures) Rules, 2021 has recognized the significance of sulh under the Islamic Law. This is because the law gives the judge the discretion to suo moto refer a matter for arbitration or reconciliation between disputing parties subject to their consent especially taking into account their relationship and personality. And where the parties refuse, the court may proceed to hearing. The rule has given an opportunity for either of the parties to apply that their matter be referred to reconciliation. Once the parties have resolved amicably, the court will enter consent judgment but the arbitration fails, the court will continue hearing.

Similarly, Order 11 (4) acknowledges *sulh* in matrimonial causes especially where there is a repeated unproven litigation on 'Dharar', the judge is allowed to appoint hakamain (special arbitrators) in accordance laid down procedures under the Sharia.

The Sharia/Area Courts in entertaining disputes before them, they administer Islamic laws by making reference or relying on both the primary and secondary sources such as *Qur'an, Hadith, Qiyas, Ijma, istihsan, Maslaha Mursalah, Sadd-d Dharee'ah, urf* and others. Therefore, it is derivable by the above sources that *sulh* is recommended which it was earlier on highlighted by some of the textual authorities permitting the application of *sulh* in Sharia Courts.

The types of disputes amenable to *sulh* by the Sharia courts are normally those that fall within their jurisdiction relating to Islamic

[38] Order 12 Rule1 of the Katsina State Sharia Court of Appeal Rules
[39] IA Haroon, (n-36).

personal law such as divorce, custody of children, inheritance, marriage, contracts among others.

It is a matter of common practice in both Sharia and Area Courts that in matrimonial causes and matters, the court usually avail the parties the opportunity to implore means under which their dispute can be resolved out of court where a respite period[40] is given to parties to return home for settlement. Once the matter has been settled by means of *sulh*, the court is left with two options of whether to confirm the award and adopt same as judgment or to set it aside and hear the case all over[41]. The latter is when the *sulh* fails.

In the light of sulh under the Islamic law, many cases were settled in the sharia courts. Thus, in *Hadiza Yahaya v Shuaibu Marafa,*[42] the Petitioner complained of deprivation of sexual intercourse and bad inter personal relationship by her husband and this formed her ground for the dissolution of the marriage. The husband denied the claim and requested that all what he spent to her should be return to him as *khul'i*. Upon this the court sought for appointment of *Hakamaan* (arbitrator) for the parties. Following this, the parties by their mutual consent, agreed for khul'i. In the circumstance, the court ordered the dissolution of marriage by *khul'i*.

7.0 Conclusion

From our discourse, we have seen that Islamic law ADR was in existence far before the conventional system. The institution of *Sulh* predates the conventional ADR that is applicable in our conventional courts. However, the conventional ADR is far developed than the Islamic ADR because it was enacted by the legislature as a form of law to regulate the conduct of alternative dispute resolution. In line with this, there is need for the enactment of Islamic ADR and Rules to regulate the conduct of *sulh* between the litigating parties.

With the development in our legal system, it is apposite to suggest the enactment of an Islamic ADR. This enactment will go along away in

[40] In Hausa is called '*Biko*'

[41] See Order 12 Rule 2 of the Sharia Court (Civil Procedure) Rules

[42] (Unreported) case No. 118 judgment delivered on 7/5/2012; see also Hamza Aliyu v Makama Abdullahi (Unreported) Case No. 107/122/2012 judgment delivered on the 16/8/2012; Alhaji Usman Ya'u v Lawal Musa (Unreported) Case No. 293/213/2012 judgment delivered on 12/12/2012

enhancing the administration of justice in Sharia Courts in Nigeria. As our society develop, so also our laws should be developing to better suit our local circumstances in tune with modern time. It is certain that the advantages of ADR outweigh the disadvantages. It is in line with this that ADR is given more attention in our legal system considering its simplicity, restoration of peaceful coexistence, cost and time saving compare to litigation.

It is evidently clear that with the return of democracy in 1999, majority of the Northern States avail themselves with the legislative competence of their States Houses of Assembly to legislate on Sharia having conferred with such power under the Constitution of the Federal Republic of Nigeria, 1999 (as amended).