JURISDICTIONAL CHALLENGES OF THE *SHARI'AH* COURTS: A COMPARATIVE EVALUATION OF THE EXPERIENCE IN NIGERIA AND ZANZIBAR

Abdulfatai O. Sambo* and Mwinyi T. Haji**

ABSTRACT

The Shari'ah embraces the Muslims total way of life. Muslims are required to judge their affairs in accordance with Islamic law. Those who do not judge with what Allah (s.w.t.) Has revealed are not seen as a true believer in the sight of Allah (s.w.t.). Thus, submitting affairs to be judged in accordance with the Shari'ah is fundamental to the Muslims' right to really practice their religion. To achieve this, sound institutions like the Shari'ah Courts with adequate powers and jurisdictions need to be put in place to ensure that Muslims properly judge their affairs in accordance with the Shari'ah. Despite this, Shari'ah Courts in Nigeria and Zanzibar are faced with a number of challenges which prevent them from properly hearing and determining the Shari'ah matters placed before them. This is notwithstanding the teaming Muslim populations in these countries. One of such challenges is that the Court is not empowered to decide all Shari'ah matters. Rather, their jurisdictions have been limited to Islamic personal law. This is in addition to the appellate challenges being faced in the two jurisdictions. The paper discusses these jurisdictional challenges in a comparative nature owing to the similar problems in the two jurisdictions. In doing this, constitutional and statutory provisions are analysed and interviews conducted with some stakeholders are used.

1. Introduction

Muslims are enjoined to apply Islamic law to their daily affairs. This makes the right to practise their religion more meaningful and compliant with Islam. Yet, many countries do not adequately empower the institutions such as the *Shari'ah* Courts to enable it hear and determine

* LL.B. (Ilorin, Nigeria), BL (Abuja-Nigeria)., LL.M (Ilorin, Nigeria), Ph.D. (IIUM), Senior Lecturer, Department of Public Law, Faculty of Law, University of Ilorin-Nigeria. He can be contacted by email at: fataisambo@yahoo.com.

** LLB (Law & *Shari'ah*), MCL (IIUM), Lecturer, Faculty of Law and *Shari'ah*, Zanzibar University & PhD Candidate, International Islamic University Malaysia. He can be contacted by email at: mthaji@yahoo.com

matters relating to important affairs of the Muslims. The situation has been a donation of limited jurisdictions to these courts. This is notwithstanding the teaming population of Muslims in those countries. The situation is not different in Nigeria and Zanzibar. The choice of these two jurisdictions is motivated by the similar legal pluralism and situations of the *Shari'ah* courts in the two jurisdictions.

Prior to Nigeria's independence in 1960, native courts were empowered to adjudicate on Islamic matters being the court of first instance. Appeals from the decision from the native courts would go the Muslim Court of Appeal; then to Magistrate Court; Federal Supreme Court and finally the West African Court of Appeal.[1] Owing to the procedural difficulties inherent in the system, the Sharia Court of Appeal was created as a replacement of the Muslim Court of Appeals.[2] Thus, Sharia Court of Appeal first came to being in 1960.[3] This marks the beginning of the legal regime that delimits the jurisdiction of the Shariah Court to Islamic personal law.[4] The Court also gained constitutional recognition in the 1979 Constitution and currently the 1999 Constitution.[5]

In the same vein, the existence of Kadhis' Courts in Zanzibar reflects its importance in the Zanzibar legal system. Kadhis' Court stands as the oldest judicial institution in Zanzibar as it was created before the 1964 revolution.[6] Throughout the nineteenth century, Zanzibar was a part of the Oman Sultanate along with the coastal regions of present-day Tanzania and Kenya.[7] The Sultan of Oman, Seyyid Said bin Sultan made Zanzibar his capital in 1832 after suffering resistance and defeat at Mombasa against the Mazrui Arabs.[8] During this period, the Kadhis' Courts had their origin in Zanzibar. In early years, Kadhis' Courts used to have criminal and

[1] See section 62(2) of Moslem Court of Appeal Law, No. 10, 1956.
[2] Moslem Court of Appeal Law, No. 10, 1956. See also David D. Laitin, "The Sharia Debate and the origin of Nigeria's Second Republic", (1982) 20(3) *Journal of African Modern Studies*, 411-430.
[3] See the Sharia Court of Appeal Law, Northern Region Law, 1960 which later became Cap 122, Laws of Northern Region Law, 1963. It came into force on 30th September, 1960.
[4] Auwalu H. Yadudu, "Colonialism and the Transformation of Islamic Law in the Northern States of Nigeria" (1992) 32, Journal of Legal Pluralism, 103-138. See also, A. O. Belgore, *History of Sharia in Nigeria* (paper delivered at a National Conference on "1999 Constitution and the Sharia" organised by College of Arabic and Islamic Legal Studies, Ilorin, 15th – 19th Feb., 2000) p. 17 where he said: "For the first time ever, the phrase "Islamic personal law" was introduced into Nigerian legislation. It was Islamic law or Moslem law throughout the colonial rule. Now our people have, by their own hands, imported a killer pill to be administered on Islamic law…."
[5] See section 260 and 275 of the Constitution of the Federal Republic of Nigeria, 1999 as amended.
[6] V. Makaramba, *A Report on Research on Judicial Application of Islamic law in Zanzibar*, Tanzania: University of Dar-es Salaam, 1990.
[7] Erin E. Stiles, *An Islamic Court in Context: An Ethnographic Study of Judicial Reasoning*, United States of America: Palgrave MacMillan, 2009, at 12.
[8] Ibid.

civil jurisdictions but this has changed over the years. After the revolution, Kadhis' Courts had undergone enormous changes. Unlike before, Kadhis' Courts have recently been given limited jurisdictions. Despite large Muslim population, Islamic law is not fully applied in Zanzibar. It is only some elements of the Islamic law that are applied as contained in the Constitution of Zanzibar, 1984, the High Court Act No. 2, 1985 and Kadhis' Courts Act No. 3 of 1985.

The paper therefore makes a comparative evaluation of the jurisdictional challenges of *Shari'ah* courts in Nigeria and Zanzibar. In doing this, the paper is divided into 4 parts apart from the introduction. The first part analyses the jurisdiction of the *Shari'ah* Court in countries under review. The second segment analyses the challenges in adjudicating Sharia matters at appellate levels in Nigeria. Similarly, the third part analyses the challenges in resolving Sharia matters at appellate levels in Zanzibar. The last part concludes the paper.

2. Jurisdiction of Sharia/Kadhis' Courts

Sharia Court of Appeal is not vested with original jurisdiction. It simply exercises appellate and supervisory jurisdiction in Islamic personal law. Islamic law was not described as personal law during colonial tutelage. After this period, the jurisdiction of the Sharia Court was limited to Islamic personal law. This limitation questions the perception of the *Shari'ah* as a total way of life. Obviously, it is more than that. It encompasses two main parts: The first part known as *Ibadat* (acts of worship) deals with a Muslim's relationship with his creator and regulates the matters of unity of Allah (*Tauhid*), prayers (*Salat*), fasting (*sawm*), pilgrimage (*Hajj*) and payment of due tax to the needy (*Zakat*). The second aspect known as *muamalat* (human acts) is further divided into rites and transactions to regulate acts between persons such as marriage, contracts, kindred institutions or acts dealing with property as in sales and rents.

Though the Constitution does not define what is meant by Islamic personal law, its elements as envisaged by the Constitution were stated. It includes: a) any question of Islamic law regarding marriage concluded in accordance with that law, including a question relating to the validity or dissolution of such a marriage or a question that depends on such a marriage and relating to family relationship or 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 dissolution and validity of that marriage, or regarding family relationship, a foundling or

guardianship of an infant; c) any question of Islamic personal law regarding waqf, 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; and e) where all the parties to the proceedings being Muslims, have requested the court that heard the case in the first instance to determine the case in accordance with Islamic personal law, any other question.[9] This shows that unlike the 1979 Constitution, the Sharia Court of Appeal in Nigeria no longer has jurisdiction in cases involving Muslims and non-Muslims. It is immaterial whether they have agreed to be bound by Islamic law. This may occasion a misplacement or miscarriage of justice.

In respected of the power and jurisdiction of Kadhis' Courts in Zanzibar, Section 6(1) of the Kadhis' Courts Act[10] depicts that the District Kadhis' Court shall have and exercise jurisdiction in the determination of matters of Islamic Laws relating to:-

(i) Personal status, marriage, divorce, guardianships and subject to the provisions of any other law for the time being in force, the custody of children in cases all the parties are Muslims.
(ii) *Wakf* or religious charitable trusts, gift inter vivos and inheritance in cases all parties are Muslims; and
(iii) Claims of maintenance, where such claim is for a lump sum of not exceeding Five hundred thousand shillings or for a periodical payment to be made at a rate not exceeding fifty thousand shillings per month, in cases all parties are Muslims.

From the provision, it can be said that the Kadhis' Courts in Zanzibar is a judicial institution set out to deal with cases arising from limited matters relating to Islamic personal law. However, in reality, Kadhis' Courts are exercising more than judicial functions. For example, they act as conciliators, arbitrators and instructors of Islamic jurisprudence.

The territorial jurisdiction of the Kadhis' Court is shown under section 6 (2-4) of the Kadhis' Courts Act[11] where it is revealed that a Kadhis' Court may be held at any place within the area of jurisdiction of the court. The section reads as under:-

[9] See generally section 277 (1) and (2) of the Constitution of the Federal Republic of Nigeria, 1999.
[10] Ibid.
[11] Ibid.

6 (2) Each of the Kadhis' Court shall be a court subordinate to the High Court and shall be duly constituted when held by the Chief Kadhi, Deputy Chief Kadhi, Appellate Kadhi or a District Kadhi.

(3) For the purposes of this section Kadhis' Court includes Chief Kadhis' Court.

(4) A Kadhis' Court may be held at any place within the area of its jurisdiction as the Chief Justice may from time to time direct.

Therefore, it is clear that the Kadhis' Courts in Zanzibar do not deal with any criminal matters. Even in dealing with civil matters, their jurisdiction is very restricted. The strange thing is that even though the Kadhis' Courts have jurisdiction to deal with the issue of divorce, they lack jurisdiction to deal with matters after divorce like the issue of matrimonial property which is accruing from divorce between the parties.

It is observed that many people, particularly women, who filed their cases before the Kadhis' Courts include the issue of matrimonial property or assets which are in disputes with their husbands. However, most of the time, the women were told to amend their petitions as the courts lack jurisdiction to entertain issues of that nature and ordered to file new case to the Civil Courts. This is proved with the fact that some Kadhis (like Sheikh Omar Said Omar, the Kadhi in charge at District Kadhis' Court of Mwanakwerekwe) helped the parties (women) by giving them money to file their cases before Civil Courts due to the lack of jurisdiction under Kadhis' Courts.[12]

It is submitted that there is a need to extend the jurisdiction of Kadhis' Courts in order for the courts to entertain issues of matrimonial property, *mut'ah*, deferred *mahr*, accommodation and maintenance during '*iddah* period etc.[13] This idea has been given weight as it is observed that since Kadhis' Courts have jurisdiction to entertain divorce matters, the courts should be given the jurisdiction to entertain issues emanating from divorce including those ancillary matters where the parties are Muslims.[14] It is a logical idea as many cases relating to disputes of matrimonial property filed before the Civil Courts involve Muslims. For example, in *Mkasi Ali*

[12] Sheikh Omar Said Omar, Interviewed by the researcher, Mwanakwerekwe, Zanzibar, 20th December 2010.
[13] Ibid.
[14]Hamisa Suleiman Hemed (Regional Magistrate), interviewed by the researcher, Vuga, Zanzibar, 17th October, 2010.

Sheha v Haji Mcha Haji,[15] divorce was first granted before the case was filed at the Regional Court for the purpose of determining the property in dispute among the parties.

Also, Akin to narrow jurisdiction of Kadhis' Courts is the Court's inadequate power. The effect of this is that parties are reluctant to attend the court sessions and there are difficulties in enforcing the judgments. It was observed that in some cases, people summoned by the Kadhis' Courts refused to sign the summons or even when they do sign, they do not show up in courts. This causes a lot of difficulties particularly in the implementation of justice where many cases were heard *exparte*. Even when the party appears before the Kadhis' Courts, he or she may say and do whatever she/he wants including insult to the Kadhis.[16]

Thus, enforcement of judgment of the Kadhis' Courts is difficult. Generally, people consider Kadhis' Courts as "Lovers Courts" which are put in place only to entertain disputes between husband and wife. This may partly explain the lack of seriousness accorded to these courts by a cross section of the people and institutions in Zanzibar, including those required to enforce its judgments. However, some Kadhis use the involvement of police in order to enforce some decisions of the court.[17] For example, it is observed that most of the husbands refused to pay the deferred *mahr* to their divorced wives. Therefore, in order to enforce the payment of the deferred *mahr*, some Kadhis (like Sheikh SeifMakame of District Kadhis' Court of Makunduchi) utilise the existence of the police to put those husbands under the lockup where through this process the payments were later made by them.[18] Though Kadhis do not have direct power to do that, it is argued that lack of power does not mean Kadhis' hands are chained particularly when there is an alternative way to enforce their judgments.[19]

It is submitted that other Kadhis may follow the same approach of Sheikh Seif, but this may not be possible as the absence of security at the Kadhis' Courts is notable. This situation puts the courts personnel especially the Kadhis and court documents in a great risk.[20] In simple

[15] Civil Case No. 89 of 1999, held at Regional Court, Vuga, Zanzibar (Unreported).

[16] It must be remembered that the judiciary where Kadhis' Court is one among its rungs carries out the functions of administering the law and implementing justice. So the power of the courts to punish for contempt is therefore essential to ensure that their decisions are followed and respectfully observed by the people. There is a need to balance between the freedom of speech and the protection of the dignity and integrity of Kadhis' Courts for the purpose of maintaining public confidence in these courts.

[17] Sheikh SeifMakameAmeir, Interviewed by the researcher, Makunduchi, Zanzibar, 18th October, 2010.

[18] Ibid.

[19] Ibid.

[20] For example District Kadhis' Court at Mwanakwerekwe you may find only one police officer while the nature of the court involves the hearing of many cases. When asked Sheikh Omar Said (the Kadhi in charge) about this

words, it can be said that Kadhis in Zanzibar are like toothless watch dogs that are there to find and give justice while they do not have power to enforce their decisions.

3 Appellate System of in the Sharia Court

This aspect discusses the system of appeals in Shariah matters in both jurisdictions and their challenges. In Nigeria, as far as Islamic law is concerned, courts with jurisdiction in terms of hierarchy are Area Courts, Sharia Court of Appeal, High Court, Court of Appeal and the Supreme Court.

3.1 Area Courts

Islamic law is regarded as the native law and custom prevailing in the Northern Nigeria.[21] There are enabling laws in this respect.[22] Section 20 of the Area Court Law provides inter alia: *"(1) subject to the provisions of this Edict, and in particular of section 21, an area court shall in civil causes and matters administer;* (a) the native law and custom prevailing in the area of the jurisdiction of the court or binding between the parties." The terms "native law and custom" was interpreted to include Muslim law. Some argue that the prevalence of Islamic civil law and its full application in matters of contract, sales, recovery of debt, customary tenancy, disposition of land under the customary right of occupancy, Islamic personal status etc in the area courts in the northern states is the same as it has been since pre-colonial time, subject to the repugnancy test.[23] The only change arises in the name of the old Alkali Courts now Area Courts. The law also clearly provides that any person may institute and prosecute any cause or matter in an area court.[24]

The phrase "or binding between the parties" in the section quoted above suggests a situation where a native law and custom (not necessarily Islamic Law) is not common in the region of the court's jurisdiction but binding between the parties. An Area Court in Kano, for instance, will be bound to apply the traditional customary law. It is however uncertain whether the same opportunity is available to Muslims who seek to be bound by Islamic civil law in the customary

issue he replied that, at least now they have one police. Before that there was no single police officer who had been assigned to the court.

[21] See section 19, Supreme Court Ordinance, 1876.

[22] See section 34 High Court Law, op cit; section 20, Area Court Law, Cap. 13, Laws of Kwara State, 1994 and section 14 (3) Evidence Act, 1990.

[23] See M. Bello, "Sharia and the Constitution" in *The Sharia issue: Working Papers for a Dialogue, 2000, Committee of Concerned Citizens* (privately printed, 2000) p. 7.

[24] See section 14 Area Court Law.

courts of the Western and Eastern Nigeria where native law other than Islamic law is prevalent. The issue here is the jurisdiction of the area courts to administer all aspect of Islamic civil law where Islamic personal law is involved. Section 4(2) Area Court Edict provides that all questions of Muslim personal law should be heard and determined by any member of an area court learned in Muslim law sitting alone.[25] The Edict conferred jurisdiction on Islamic personal law and other areas of Islamic civil law on judges of other grades of Area Court. The provision affecting the upper area court is about the most misunderstood. The prevalent view appears to be that the subsection has ousted the jurisdiction of the Upper area court in other matters of "Islamic civil law aside from Islamic personal law over which one of its member learned in the law would sit. By this impression, they tend to foist other areas of Islamic law on Islamic personal law especially when they are interested in initiating their action in the Upper Area Court.

Many who wish to be heard by a sole Judge of Upper Area Court on their Islamic matters other than those enumerated above will find solace in the last phrase of paragraph (e) above –"any other question." The phrase cannot be so interpreted unless all parties agree in writing that a sole Judge should decide such matters.[26] Many Islamic civil matters have been frustrated from this misconception as the other counsel may rightly challenge the jurisdiction of a sole judge in such matters. This is more particularly so as section 2 of the Edict interpreted area court to include an Upper Area Court. It is appropriate that while sitting over such matters at least one of the Judges must be learned in Islamic law. On appeal from the decision of Area Court on Islamic law matters other than those of Islamic personal law, the High Court hears and determines the appeals applying Islamic laws while appeals on questions of Islamic personal law goes to the Sharia Court of Appeal.[27]

3.2 Sharia Court Of Appeal

Jurisdiction of the Sharia Court of Appeal well rooted in the Constitution. Although it is to have jurisdiction on matters of Islamic personal law, the states, through the laws of the House of Assembly can extend its jurisdiction. Some states of the Federation in which the court has been established have enacted laws to improve its jurisdiction on Islamic law generally. Courts have struck out cases decided by Sharia courts as a result of the failure of some states to make

[25] But for this provision, 3 judges of Upper Area Court sit on any matter: section 4 (3) (b) of Area Court Edict
[26] Under the 1999 Constitution, such agreement is subject to all parties being Muslims: section 277 (2) (e).
[27] See section 54, Area Court Edict, 1967.

consequential provision to improve its jurisdiction.[28] Karibi-Whyte JSC in *Magaji v Matari*[29] says: "The intention of the constitutional provision which is very clear is to confine and limit the exercise of the jurisdiction of the Sharia Court of Appeal to subject matter of Islamic personal law…."[30] This is a clear breach of "in addition to such other jurisdiction as may be conferred upon it by the law of the state…." contained in the Constitution.[31] The opinion of Uwais (C.J.N.) also said: "Learned Counsel did not refer us to any Kogi State law, which gave the *Shari'ah* Court of Appeal of the state the jurisdiction to deal, at first instance, with any dispute relating to the appointment of an *Imam* or *Naibi*…[32] This shows that if there were such laws, the court would have been empowered to determine matters outside Islamic personal law even as a court of first instance. A flash point on the jurisdiction of the *Shari'ah* Court of Appeal is paragraph (e) of section 277 (2), 1999 constitution. The provision is vague as it is capable of various interpretations.[33]

Thus, in *Achiakpa and anor. v Nduka and ors,*[34] the court held that a native (Area) court is not presumed to have any jurisdiction but that which is expressly provided by the statute creating it. The substitute of the phrase (whether or not they are Muslims) in section 242 (2) (e), 1979 constitution with the phrase "being Muslims" in section 277 (2) (e), 1999 constitution has effect of preventing non-Muslims from enjoying their freedom to submit to the jurisdiction of the Sharia Court of Appeal. Much as this innovation is aimed at limiting the application of Islamic civil causes in Nigeria, it was introduced without being mindful of its effects on the rights of non-Muslims. This appears to violate the rights of non-Muslims to access Sharia Court of Appeal to ventilate their grievances and thus appears discriminatory. [35]

[28] *Magaji v Matari* (2000) 5 S.C.N.J. 140.
[29] Ibid.
[30] Ibid at 15.
[31] See section 277 (1), 1999 Constitution.
[32] *Abdul-Salami v Salawu* (2002) 6 S.C. (Pt. II) 196
[33] In one breath, it suggests that the matters itemized in S. 277(2) are not exhaustive of question of Islamic personal law and the parties, being Muslims, can agree on any other question to be of Islamic personal status. In another breath, it suggests that a sole Judge of an Upper Area court can be conferred with additional jurisdiction than he is conferred by the statutes by an agreement of the parties if they are Muslims.
[34] (2001) 7 SCNJ 585.
[35] See section 42, 1999 Constitution.

3.3 High Court

With the coming into effect of 1979 Constitution,[36] the High Court of a state attained the status of a court of unlimited jurisdiction. The former exclusive original jurisdiction enjoyed by the Native Court on Islamic civil causes was no longer the case.[37] The High Court now had jurisdiction to hear all cases, Islamic civil causes inclusive, except as may be excluded by the Constitution. Although section 54 of the Area Court Edict vests the power of appeal in cases involving questions of Muslim personal law in the Sharia Court of Appeal and High Court in all other cases (even of Islamic law), yet, the Constitution does not reflect this.

The High Court is empowered to apply principles of Islamic law treating it as a variance of native law and custom.[38] In *Maina Gambo v Hajja Kyariran*[39] contract of money lending with interest or without license was held to be void under both the Islamic law and statute, yet the principle of Islamic law returning parties to a void contract to status quo ante allowing the respondent to recover the principal sum was held to be incompatible with section 5 of the Money Lenders Act, and as such caught up by the tripartite test.[40]

The High Court Judges must be qualified to practice as a legal practitioner in Nigeria for ten years in order to handle Islamic civil causes.[41] He is presumed to be knowledgeable of the law on which he adjudicates. This clearly does not cover the knowledge of Islamic law required of a Judge to adjudicate on Islamic civil causes.[42] Also, there is no requirement for appeals from

[36] Originally, the High Court in the Northern Region were established sequel to the Township Ordinance of 1917. These township, mostly populated by Southern Nigerians, arose out of the development of trade and Commerce and it was deemed inappropriate to apply *Shari'ah* to their trade and "non-native" populace. The court has no jurisdiction to decide *Shari'ah* cases which were within the exclusive jurisdiction of the Native Courts.

[37] See sections 236 of 1979 Constitution and 272 of 1999 Constitution. See also *Adisa v Oyinwola* (2000) 6 S.C.N.J. 290 at 313.

[38] See section 34 (1) High Court Laws, 1963. See also *Alkamawa v Bello*(Supra).

[39] Unreported decision of the High Court, Jos, Suit No. JD/39A/1962 cited on Belgore, op cit, p. 4

[40] Cases of *M. Abba v Mary Baikie* (unreported appeal from Kano suit No. K/20A/1943 cited in Belgore, op cit, p. 12, *Mariyama v Sadiku Ejo,* op cit; and *Yunusa Rasaki v T.T. Adesubokan*, op cit suffered the same fate

[41] section 271 (3), 1999 Constitution

[42] Abubakar B. Hassan, *As-halul Madrik* (Lebanon: Darul-Fikri, undated) at p. 196 said: posited in his book regarding a Judge of Islamic law thus: "It is stipulated that for a man to be appointed a judge, he should be a Muslim, free person, male and matured person. He should possess the capacities to hear and see He should be literate, conscious and should be capable to make independent research and interpretation of the Quran and the Sunnah or at least possess the capacity to interpret what an exponent of Islamic law has interpreted on the basis of the Quran and Sunnah."76 The implication of the foregoing requirements is that we now have Judges to administer Islamic civil causes who are not just non-Muslims but who can not also identify any alphabet of the law they apply. What can be more repugnant to natural justice, equity and good conscience? With humility, the Muslims among our High Court Judges are not extricated from this phony system of justice. Even where they possess some knowledge of Islamic law, their mouths are gagged and hands tied by the aforementioned tripartite

the High Court bordering on other aspect of Islamic law than Islamic personal law which (the former) form the bulk of Islamic civil causes. This is therefore a serious challenge.

3.4 Court Of Appeal

In matters relating to adjudication of Islamic personal law at the level of the Court of Appeal, the President of the Court of Appeal appoints those justices who sit on the matter. In making such appointments, the constitution requires that those appointed must be learned in Islamic personal law. It is expected that the Justices of the court of Appeal will have more or equal knowledge with the judges of the lower courts. However, the Constitution does not require greater Shariah qualification from the higher bench for them to sit on matters of Islamic personal law.[43]

Thus, blame on the shortage of the essential knowledge of the Court of Appeal and Supreme Court Justices in Islamic law is not on the justices. Rather, the Constitution allows a non-Muslim High Court Judge to preside over sensitive Islamic matters as appointment of an *Imam* (prayer leader).[44]One cannot but wonder how a Judge lacking in the knowledge of a law and the idiosyncrasies of the people upon which it applies feels intellectually comfortable and psychologically convenient to apply it. It is a mental sore.

The Court of Appeal is duly constituted by three of its Justices learned in Islamic personal law when sitting over an appeal from the Sharia Court of Appeal.[45] They are not required to be Muslims. These aspects are better handled by Muslim lettered in Arabic language which is the language of original sources of Sharia.

3.5 Supreme Court

At the Supreme Court, the Shariah matters become unsatisfactory. The reason is that the Constitution does not mandate justices sitting on Islamic personal law matters to be learned in Islamic law like what obtains at the Court of Appeal. This implies that justices not learned in

test to judge against their conscience. The natural consequence of this arrangement is either misplacement or miscarriage of justice. Where the tripartite test is applied, justice is misplaced and where Islamic law cannot be upheld to be repugnant, its application by a "non-learned" judge leads to miscarriage of justice. See also Yadudu, op cit, p. 122

[43] See section 276 (3) compared to sections 247 (1) (a) and 288, 1999 Constitution and what is required of an Islamic law judge i.e. being a distinguished scholar of Islamic law.

[44] *Abdul-Salam v Salawu,* op cit., and *The Registered Trustees of Offa Grand Mosque and Islamic Centre v H.R.H. Oba Mustapha O. O. II and Anor* (Unreported) suit No. KWS/OF/24/2002, ruling of the High Court, Offa delivered on 27/6/02.

[45] See section 247 (1) (a), 1999 Constitution.

Islamic law may sit over Islamic matters. Also, even where some are learned in Islamic law, the majority who carries the day may not be learned in Islamic law. This will occasion an injustice caused as a result of ignorance on the part of the Supreme Court bench. Similarly, the law does not mandate those sitting on Islamic matters at the Supreme Court to be Muslims. This is an obvious danger because the judges may not appreciate the jurisprudence of Islamic law which is a separate and distinct jurisprudence from the common law. However, the constitutions have been so cautiously drafted to remove this position and that it did not mention the religious affinity of the Kadis of *Shari'ah* Court of Appeal or Justices of the Court of Appeal and Supreme Court required to have knowledge of Islamic personal law.

In the same vein, a non-Muslim graduate of Islamic law by provisions of sections 276(3) and 288(1) & (2) (a) of the 1999 Constitution may be appointed as a Kadi or appointed to the bench of the Court of Appeal or Supreme Court in consideration of his knowledge of Islamic personal law. A contrary view may violate the non-Muslim's fundamental right to freedom from discrimination.[46] Many Kadis of the *Shari'ah* Court of Appeal and the Area Court Judges who are very learned in Islamic law are yet to be opportune to sit over Islamic civil causes at the superior courts level. The reason seems to be because they are not legal practitioners in Nigeria.[47]

4. Hierarchy of Appeal in Kadhis' Courts

According to section 3(1) of the Kadhis' Courts Act,[48] the lowest court in the Kadhis' Court system is the District Kadhis' Court which will be established in each District in Zanzibar followed by a Chief Kadhis' Court for Unguja Island and an Appellate Kadhi who will be based in Pemba Island. Appeal from these courts shall go to High Court where its decision is final.

4.1 Appeals from District Kadhis' Court to the High Court

As mentioned above, the District Kadhis' Court is the lowest court within the levels of Kadhis' Courts in Zanzibar. The District Kadhis' Courts must not be less than ten and not more than fifteen within Zanzibar. Currently, there are about nine District Kadhis' Courts as mentioned above. District Kadhis' Court has an original jurisdiction to hear and determine matters of

[46] Section 42
[47] The Constitution says that only legal practitioners can sit in those courts: sections 231 (3) and 238 (3), 1999 Constitution.
[48] Act No. 3, 1985.

Islamic laws relating to personal status, marriage, divorce, guardianship, custody of children, *wakf* or religious charitable trusts.[49]

Above the District Kadhis' Court is the Chief Kadhis' Court for Unguja and Appellate Kadhi for Pemba to whom each of them has power to hear and determine appeals from District Kadhis' Courts. At this level of appeal, there seems to be confusion among the people in Zanzibar when they interpret the Act.[50] The Act mentions that the Chief Kadhis' Court, Deputy Kadhis' Court and Appellate Kadhis' Court shall act as an appellate court for decisions from the District Kadhis' Courts. Even if it is mentioned clearly that an Appellate Kadhis' Court has powers to hear and determine appeal cases in PembaIsland, yet no clear answer to the UngujaIsland where Chief Kadhis' Court and Deputy Kadhis' Court are mentioned. The confusion comes as to whether Chief Kadhis' Court, Deputy Kadhis' Court and Appellate Court have the same jurisdiction or Chief Kadhis' Court is above this two courts. If this is the case, then the question arises as to whether Chief Kadhis' Court is another rung which is independent to the remaining two. In other words, what is the essence of having Chief Kadhis' Court and Deputy Kadhis' Court in UngujaIsland?

This problem can be justified because there are some people after the hearing of their appeals by the Deputy Chief Kadhi, they come up with the argument that they need their cases to be heard under appeal by the Chief Kadhis' Court before reaching to the High Court.[51] From that point of view, the needs to ascertain this issue becomes important. It is submitted that both courts stand as appellate courts of the same level hearing appeals from District Kadhis' Courts where Appellate Kadhis' Court deals with the cases from all District Kadhis' Courts from Pemba and for Unguja Island, it the Chief Kadhis' Court which is presided by either Chief Kadhi or Deputy Chief Kadhi hearing appeals from all District Kadhis' Courts in this Island.[52]

The above argument sounds important as it can be observed that many people fail to understand the real picture of these courts due to the fact that they do not examine the courts themselves. Rather, they are concentrating on someone who is presiding in these courts. For example, there

[49]Section 6 of Act No.3, 1985.
[50] Ibid.
[51] See *Mohamed IssaAbdalla and Husna Rashid Ali v DaudiBakarNyange and Maryam Mohamed Issa*, Civil Appeal No. 15 of 2005 held at High Court, Zanzibar (Unreported)
[52]IddiPandu Hassan, (Attorney General) interviewed by the researcher, Vuga, Zanzibar Stone Town, 7th October, 2002.

was particular period whereby there was no Chief Kadhi in Zanzibar due to the death of Sheikh Ali KhatibMranzi. Therefore, the Deputy Chief Kadhi was the one who was hearing appeals in this level. For many people, this was a wrong procedure because cases heard by the Deputy Chief Kadhi went to the High Court directly. People failed to know that in a situation where the Deputy Chief Kadhi is hearing appeals, he is having the same jurisdiction and power as that of Chief Kadhi.

Appeal from any judgement of the Chief Kadhis' Court, Deputy Chief Kadhis' Court and Appellate Kadhis' Court lie to the High Court of Zanzibar. This is the final court on cases emanating from Kadhis' Courts and such appeal shall be heard by a panel of five members presided by a judge of the High Court and the decision is reached by taking the opinion of the majority of members.[53] The other four members sitting with the judge must be persons who are well conversant in Islamic laws hereinafter referred to as '*Ulamaas'* and they are appointed by the Judicial Service Commission.[54] In terms of qualifications of the members, there is no much difference with the qualifications that someone must possess to be appointed as a District Kadhi whereby he has to attend and obtain a recognised qualification in Islamic Laws from any Institution approved by the Council of *Ulamaas* and has held the qualification for a period of not less than three years and has considerable experience in the knowledge of Islamic Laws.[55]

Generally, it is observed that majority of people from different cadres and groups are not satisfied with the nature of rungs (levels) of appeal involved in Kadhis' Courts. It is submitted that the scope of appeals in the Kadhis' Courts is very narrow as compared to the ordinary court where only two-tier of appeal are allowed i.e. Chief Kadhis' Court or Appellate Kadhis' Court and High Court. Appeals from ordinary courts start from Primary Court and reach the Court of Appeal of Tanzania. Under simple mathematics, it can be seen that, four stages of appeal exist from that scope contrary to the stages of appeal exist in the Kadhis' Courts.

Thus, the first question which readily comes to mind is the essence of having wide scope of appeal in a particular judicial system. Thus, an effective system of appeals is an essential part of a well-functioning system of civil justice and there can be no doubt about the importance of the availability of appeals to ensure that redress can be obtained for mistakes by the lower

[53]Section 10 (2) of the Kadhis, Courts Act, 1985.
[54]Section 10 (3) of the Kadhis' Courts Act, 1985.
[55]Section 10 (7) of the Kadhis' Courts Act, 1985.

courts.[56] Ideally, appeals serve two purposes: the private purpose, which is to do justice in particular cases by correcting wrong decisions, and the public purpose, which is to ensure public confidence in the administration of justice by making such corrections and to clarify the law and to set precedents.[57]

After realising the importance of having reasonable tier of appeals within the Kadhis' Courts in Zanzibar, then the problem becomes the number of rungs to be established or to be followed. It is strongly submitted that there is no need for the cases starting at Kadhis' Courts to reach the level of High Court.[58] It is further submitted that the current practice where a judge sits with four *Ulamaas* is not what has been proposed as it was suggested for a Chief Kadhi to seat with these four *Ulamaas* instead of a judge.[59] Thus, this suggestion focused on making Chief Kadhis' Court as the last rung of appeal for all cases emanating from District Kadhis' Court. The involvement of High Court on hearing appeals from Kadhis' Court causes two issues to emerge; one is the involvement of a judge who might be a non-Muslim and two is the involvement of four *Ulamaas* at the level of High Court.

With regard to the issue of judge who might be a non-Muslim or Muslim without having knowledge of Islamic law, different arguments have been given. On one side, it is argued that there is no problem for the cases emanating from Kadhis' Court to reach the High Court once a judge (Whether a non-Muslim judge or Muslim without Islamic knowledge) is sitting with four Muslim scholars.[60] This is substantiated with the argument that once the decision is reached under the majority basis, there is nothing to fear on the implementation of justice.[61] If one reads between the lines, it may be realised that the above arguments might be correct but it must be stressed that when it comes to the point of voting for the decision, the presiding judge has the last cast. It is very likely that where the system is applied or introduced in a jurisdiction where the majority of judges are predominantly non-Muslims, problems are likely to occur.[62] Even though it can be argued for the judge who is a non-Muslim to undergo training

[56] R. R. Sethu, "Re-Defining the Appellate Role of Federal Court," *The Malayan Law Journal Articles*, Vol. 4, (1999): 6.
[57] Ibid.
[58] Omar MussaMakungu (A Kadhi of District Kadhis' Court, Mwera), interviewed by the researcher, 5th October,2010.
[59] Ibid.
[60]IssayaKayange, (Acting Registrar General of Zanzibar High Court), interviewed by the researcher, Vuga, Zanzibar Stone Town, 22nd September 2010.
[61] Ibid.
[62]Hamidu Ismail Majamba,*Perspective of the Kadhi's Court in Zanzibar*, Zanzibar: Zanzibar Legal Services Centre, 2008, at 8-9.

in Islamic law, yet this may be taken to be offensive to most of Muslims. Though a non-Muslim judge may get a formal training and become well versed in the application of Islamic law principles, in reality, it is those who have been groomed in and practice the religion that are likely to have an added advantage.[63] In this respect, it is argued that the idea of sending cases established from Kadhis' Courts to the High Court must be refrained.[64]

On the issue of involvement of four *Ulamaas* at the level of High Court, it is submitted that these four *Ulamaas* must not sit with a High Court judge because most of the time these four *Ulamaas* do not have the qualifications that the Chief Kadhi has.[65] Therefore, by allowing these *Ulamaas* to sit at the higher level (High Court) to hear appeals from Chief Kadhis' Court might cause problems within the Muslim scholars. It is further argued that in order for the Kadhis' Courts to work properly in Zanzibar, there must be separate systems between Ordinary Courts and Kadhis' Courts.[66] To put this into effect, it is suggested for the Chief Kadhi to administer Islamic issues within the jurisdiction of Kadhis' Courts and the Chief Justice to administer all matters under the ordinary courts.[67]

From the above discussion, it can be said that the existing structural set up of the Kadhis' Courts is not adequate enough particularly on the issue of appeals. There is a need to enlarge the scope of appeals in the sense that Primary Kadhis' Courts must be established as the lowest court. Again, there is need to add Regional Kadhis' Courts before the Chief Kadhis' Court is taken as the final stage of appeal on cases emanating from Kadhis' Courts where he will sit with four *Ulamaas*.

4.2 The Preclusion of the Court of Appeal of Tanzania

The Court of Appeal of Tanzania has been established in order to take the place of East African Court of Appeal after the collapse of the East Africa Community. The Court is a Union matter as such it exercises its jurisdiction throughout the United Republic of Tanzania (this combines both Tanzania Mainland and Zanzibar). In its application, it is the highest and final court in

[63] Ibid.
[64] AbdallahTalibAbdallah (Senior Officer, Wakf and Trust Commission), interviewed by the researcher, Vuga, Zanzibar Stone Town, 1st October, 2010.
[65] Omar MussaMakungu (A Kadhi of District Kadhis' Court, Mwera), interviewed by the researcher, 5th October,2010.
[66] Saleh Mubarak, (Senior State Attorney, Attorney General Office, Zanzibar) interviewed by the rsearcher, Zanzibar, 6th October 2010.
[67] Ibid.

terms of appeal and it has appellate jurisdiction on criminal and civil cases. Recently, the court was vested with revisionary powers over the High Court of Tanzania and Zanzibar. The point to note here is that appeals from the decision of the High Court of Zanzibar lie to the Court of Appeal, except in the cases emanating from Kadhis' Court. This means that, under the Zanzibar Constitution, the decision of High Court in all cases originating from Kadhis' Courts is final.[68]

The preclusion of the Court of Appeal to hear the appeals originating from Kadhis' Courts establishes a debate among the scholars in Tanzania. On one hand, the preclusion was seen as a constitutional issue and curtailment of further room of appeal to the aggrieved party. But on the other side, the preclusion is viewed as something mandatory as there is no connection between Court of Appeal and Kadhis' Courts. In the interesting case of *Mohamed RafikIshaq& Another v Anwar Hussein Jaffer& 2 Others*,[69] the Court of Appeal, after quoting Article 99 (2) (b) of the Zanzibar Constitution and section 10 of the Kadhis' Courts Act, 1985 prohibiting appeals on Islamic matters to the Court of Appeal stated as follows:

> "It is clear that this Court has no jurisdiction to hear appeals emanating from the Kadhis' Court on matter of Islamic law or just Islamic matters as the Constitution of Zanzibar put it."[70]

However, in the end of this case, the Court of Appeal went on to hear and determine that appeal and argued that the question of who owns what does not fall within the ambits of section 6(1) of the Kadhis' Courts Act, 1985. Perhaps this is regarded as a genuine case calling for interference from the Court of Appeal. However, on the other side it can be argued that the highest Court of the land must not be content with a provision limiting its otherwise limitless authority over other judicial bodies be it Kadhis' Court or Electoral Commission. From this stands, it can be said that it is just a matter of time before Article 99(2) (b) of the Zanzibar Constitution, 1984 to be regarded as unconstitutional.

The above notion given by the Court of Appeal needs to be revisited. First of all, there is a need to differentiate between 'Union matter' and 'Union court.' With simple interpretation, it can

[68]Article 99 of the Zanzibar Constitution, 1984.
[69] Court of Appeal of Tanzania at Zanzibar, Civil Appeal Case No. 35 of 1994 (Unreported).
[70]Ibid, at 4.

be said that Tanzania Court of Appeal is a union matter and not a union court. So once it is a union matter, it gives the chance for the two parts of the union (Tanzania Mainland and Zanzibar) to have equal rights in presenting their disputes before it considers that not every issue decided by the High Court of Zanzibar can draw the interest to the Court of Appeal. This is also emphasised by the Constitution of United Republic of Tanzania, 1977when it states that:

> "A law enacted in accordance with the provisions of this Constitution by Parliament or by the House of Representatives of Zanzibar may make provisions stipulating procedure for lodging appeals in the Court of Appeal, the time and ground for lodging the appeals and the manner in which such appeal shall be dealt with."[71]

Thus, by virtue of the above provision which gives powers to the House of Representatives to enact law, the House of Representatives decided to preclude the Court of Appeal to hear certain appeals from the High Court of Zanzibar (particularly those which are emanating from Kadhis' Court). The interpretation which can be found from the above Article is that a case starting from Kadhis' Court does not reach the Court of Appeal in case of further appeal. To add further, it can be found that even the Appellate Jurisdiction Act[72] itself which gives the room for the appeals to rely on Court of Appeal, endorses the possibility of this court being ousted when there is an existence of particular written law. The Act provides that:

> "In civil proceedings, except where any other written law for the time being in force provides otherwise, an appeal shall lie to the Court of Appeal."[73]

From this provision, it sounds a bit strange when the Court of Appeal Judge from the above case contravenes this stand by hearing the appeal from High Court of Zanzibar in a case emanating from Kadhis' Courts. Furthermore, the Constitution of United Republic of Tanzania, 1977[74]went further to clarify the idea that Court of Appeal is just a union matter and not a union court. It is provided within the Constitution that the Chief Justice of Tanzania shall have no power over any matter concerning the structure and administration of the day to day activities

[71]Article 117 (A) of the United Republic of Tanzania Constitution, 1977.
[72] Cap. 141 (R.E. 2002).
[73]Section 5 (1) of the Appellate Jurisdiction Act, No. 141, 2002.
[74] See Article 116 (1) of the United Republic of Tanzania Constitution, 1977.

of the Courts which is established in accordance with the Constitution of Zanzibar, 1984 or any other law of Zanzibar. Again, this provision clearly reveals that Zanzibar has its own judicial system with its own powers. Thus, from those powers, it precludes the notion of extending the issue of appeal of all cases emanated from Kadhis' Courts.

To say that Article 99(2) (b) of the Zanzibar Constitution, 1984 is unconstitutional amounts to declaring that Zanzibar Constitution is subordinate to the United Republic of Tanzania Constitution, which is totally wrong. To show that the Zanzibar Constitution has got its own powers, it emphasises on the need of any law enacted by the Parliament based on union matters to be presented before the House of Representatives before it starts to be applied in Zanzibar.[75] Therefore, if the Constitution has got these powers, it cannot lack the power to limit the Court of Appeal from hearing particular appeals on cases emanating from Kadhis' Court.

In the meantime, even the jurisdiction and powers of Kadhis' Courts as provided by the Kadhis' Courts Act[76] emphasise the idea that there is no point to challenge the constitutional provision which curtails the jurisdiction of the Court of Appeal on cases started at Kadhis' Courts. This can be proved by making comparison with other countries like Malaysia where appeals from *Sharī'ah* Courts to civil courts are precluded. The historical background of judicial system in Malaysia shows that before the amendment made to Article 121 of the Malaysian Constitution, this kind of conflict had occurred. For example, in *Myriam v Ariff*,[77] divorce has been issued before the Kadhi and the learned Kadhi had made a consent order giving the custody of the children in marriage to their father. Later on, the mother married to another man and claimed custody of the children. It was held by Abdul Hamid J., (as he then was) that the order made by the said Kadhi did not prevent the mother of the children from making the application to the High Court.[78]

Also in *Nafsiah v Abdul Majid*[79] where the plaintiff brought an action for damages for breach of promise of marriage, contending that the damages should be aggravated by reason that she

[75]Article 132 of the Zanzibar Constitution, 1984.
[76] Act No. 3, 1985.
[77][1971] 1 MLJ 265.
[78] Also see the decisions in *Commissioner for Religious Affairs, Trengganu &Ors v Tengku Mariam* [1969] 1 MLJ 110; *Abdul Fata Mohamed Ishak v RasamayaDhurChowdhri*[1894] LR 22 IA 76; *Zainuddin v Anita* [1982] 4 JH 73.
[79][1969] 2 MLJ 174 and 175.

had been seduced by the defendant and she had given birth to a child. Both the plaintiff and the defendant had earlier been prosecuted under the Administration of Muslim Law Enactment of Malacca and convicted. The plaintiff then brought her action before the High Court and it was held that the High Court had jurisdiction to hear the case and awarded damages of $1,200.

Therefore, the amendment of 1988 did not introduce anything new to the system but merely restored and asserted the indigenous or the original position of Islam and the *Sharī'ah* Courts in the Malaysian legal system by inserting Clause (1A) into Article 121 of the Constitution.[80] The amendment was intended to free the *Sharī'ah* Courts from any interference from the Civil Court.[81] As a result of the amendment, cases decided by the *Sharī'ah* Courts, unlike previously, are no longer subject to appeal in the Civil Courts.[82] Furthermore, the amendment also prevented the High Court from having any jurisdiction over matters that fell within the jurisdiction of the *Shari'ah* Courts.[83] Besides, independence to the Kadhis' Courts being the reason for the exclusion but in reality most cases involve technicalities and require persons who are well conversant with Islamic law. As to the nature of Court of Appeal, these persons are not there.

5. Conclusion

Despite the teaming populations of Muslims in countries under review, the jurisdiction of the *Shari'ah* Courts is limited to Islamic personal law. Islam is visibly more than mere personal law within the meaning assigned to it by these countries' constitutions. It is all encompassing and Muslims are required to follow Islam entirely and judge their affairs in line with Islamic injunctions. The limitation of *Shari'ah* Courts' jurisdictions to personal law seems to violate the right of the Muslims in these countries to fully practise their religion. There has to be an enabling environment for the practice of religion before it can be said that freedom of religion exists in a society. However, the situation in Nigeria is still a bit enhanced compared to Zanzibar in matters of limitation to Islamic personal law. The reason is that the Nigerian Constitution empowers the States that desire *Shari'ah* court to expand the jurisdiction of the

[80]Shamrahayu A. A., "The Malaysian Legal System: The Roots, the Influence and the Future," Volume 3, (2009) *The Malayan Law Journal Articles*, 6.
[81] Ibid.
[82] Ahmad Ibrahim, "The Amendment to Article 121 of the Federal Constitution: Its Effect on Administration of Islamic Law," Volume 2, (1989) *Shari'ah Law Journal*, 155-164.
[83] Ibid.

Court through their State Houses of Assembly. Many Muslim Northern States of Nigeria seems to have taken this advantage to expand the Courts' jurisdictions. In Zanzibar, however, the situation still remains the same as no such opportunity is given for its expansion except going through constitutional amendment. As a result, the Kadhis'/*Shari'ah* Courts do not entertain issues of matrimonial property, *mut'ah*, deferred *mahr*, accommodation and maintenance during '*iddah* period.

Again, in both jurisdictions, parties before the court must be Muslims for the matter to be heard and determined by the *Shari'ah* Courts. The initial position in Nigeria under the 1979 Constitution was that parties might not necessarily be Muslims so long as they agreed that their matters be heard and determined in accordance with Islamic law. This position allowed non-Muslims to benefit from the lofty principles of the *Shari'ah*. However, the 1999 Constitution, as amended, changed the position to restrict parties before the *Shari'ah* Court to be Muslims. This actually deprives the non-Muslims their rights to choose the law that governs their transactions for their benefits.

Also, enforcing the decisions of the *Shari'ah* Court seems not to be a problem in Nigeria. The reason is that the Sharia Court of Appeal is considered one of the superior of records vested with judicial power in Nigeria. Thus, its decision has effects like that of its High Court counterpart. However, there is a problem in enforcing the decision of the Kadhis Courts in Zanzibar. Parties may sometimes disobey the Court's decision with impunity. The court itself has been labelled 'Lover's Court.' The reason for this is that the Court lacks enforcement mechanism and judicial power is not vested in the Kadhis Court. There is therefore the need to equip the Court with adequate enforcement powers to allow it function effectively.

Lastly, both jurisdictions seem to have challenges at appellate levels. In Nigeria, appeals from the Sharia Court of Appeal go the Court of Appeal and then Supreme Court. At Court of Appeal, even though those who will hear and determine *Shari'ah* matters are required to be learned in Islamic personal law. The qualification of these persons in *Shari'ah* matters are not mentioned other than being a Justice of the Court of Appeal and learned in the *Shari'ah*. The position at the Supreme Court level is even worst. The reason is that there is no requirement that those who sit on Islamic law matters should be learned in Islamic personal law. Even though practically, the justices who hear the matter may be learned in Islamic personal law, however, other members of the panel may not know much about Islamic personal law. Such justices may end up having their ways in matters of the *Shari'ah*. In Zanzibar, appeals from

Kadhis Courts go to the High Court sitting with four other *Ulamas*. This seems to be better. However, the last casting vote of the High Court judge has much influence. This may affect the justice of the matter. The situation is also worst as the matter ends at the High Court without an opportunity for further appeal. There is therefore the need for both jurisdictions to empower and improve the jurisdictions of the courts in order to ensure prompt and effective administration of justice in the *Shari'ah* matters in both jurisdictions. The *Shari'ah* is a separate legal jurisprudence and it should be seen as such.