

OF THE OFFICE OF A *QāDI* (JUDGE) IN ISLAMIC LAW AND THE NIGERIAN LEGAL SYSTEM: A CRITIQUE

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Abstract

Administration of justice is the core value of any civilized setting or polity. This is often shouldered on judges (*qādis*). If the administration of justice is primarily and principally that of a *qādi*, it follows therefore that provision must be made for the office of a *qādi*. As a complete code, Islamic law provides for the office of a *qādi* and interestingly, the Nigerian Legal System via the 1999 Constitution of the Federal Republic of Nigeria (as amended) also provides for same albeit some discrepancies. This paper studies the office of a *qadi* in Islamic law and the Nigerian Legal System. This paper proceeds to discuss the qualities of a judge in Islamic law as well as judicial ethics and etiquettes. This paper finds out that unlike Islamic law, the Nigerian legal system is not detailed enough to accommodate the key qualities of a *qadi* as enshrined in Islamic law. The paper concludes that the relevant provisions of the Nigerian legal system be amended to accommodate the pristine provisions of Islamic law as it affects the office a judge. The paper adopts doctrinal research methods by analyzing the primary and secondary sources of legal research. Interview were also conducted.

Keywords: *Qādi*, Nigerian Legal System, Islamic Law

1. Introduction

Islamic law as a complete code places a premium attention on the welfare of all and sundry. This is evident in the division of governmental arms into three which has the judiciary as the most sacred and crucial of all among them. Since humans cannot live in

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isolation, there is bound to be differences which must be settled by the appointed person (s) by the government and this necessitates the existence of a functional judiciary. It is therefore imperative to have at least a *qādi* whose primary responsibility will be adjudication of disputes between litigants.

Islamic law attaches importance to the attainment of substantial social justice in its entirety. The duty to attain justice is a duty imposed on the society as a whole; such duty is considered *fard al- kifāyah*¹ in Islamic law.² A Muslim community that fails to establish a judicial arm (courts) to settle disputes and interpret law according to the revealed injunctions of God has failed in its duty to God as a community.³ In such a situation, the administration of justice thus becomes *fard ‘ayn*. If Shari‘ah attaches great importance to justice, it follows therefore that certain persons be charged with this sacred, social and religious duty and this gives birth to the existence of a person called ‘*Qādi*’ judge or ‘*Qādi al-Qudāt*’ i.e. Grand Kadi as entrenched in the Nigerian law⁴. Hence, considering the risky and important nature of the office of a *qādi*, the occupant of the office is expected to be worthy in both probity and character. He should be unbiased to the parties before him; he should not take a stand before he enters judgment in a suit before him, he is enjoined not to show affection to any of the parties as this will definitely be at the expense of the other. He must neither show inclination to one against the other nor guide one to succeed against the other. Also, he must not show one the way to his testimony.⁵ The Qur’ān reads:

O ye who believe, stand firmly for God, as just witnesses;
and let not the enmity and hatred of others make you avoid

¹ This is one of the divisions of compulsory act in the science of *usūl al-fiqh* (Islamic Law of Jurisprudence). It means a collective responsibility which if undertook by an individual or group of individuals, it releases others from such an obligation. Another example of this is *salātul-janāzah* (prayer on the dead). The other corresponding division is *fard ‘ayn* which simply means acts which are incumbent on all and sundry. Example is the obligatory *salawāt* (prayers).

² Ambali M.A., ‘The Practice of Muslim Family Law in Nigeria’ (2nd edition, published by Tamaza Company Ltd) 2003 p. 84

³ Ambali M.A... p. 85

⁴ Pursuant to section 275 of 1999 Constitution of the Federal Republic of Nigeria (as amended)

⁵ Adamu A., ‘Islamic Law; The Practice and Procedure in Nigeria Courts’ (Espee Printing & Advertising, Kaduna, 2008) PP. 22-26

justice. Be just: that is nearer to piety; and fear God. Verily, God is well acquainted with what you do⁶

In this work, the writer discusses the nature of the office of a *qādi* to wit: the appointment and qualification of a *qādi*, judicial ethics and etiquettes under the Islamic law, independence of judiciary and lastly, some salient and contemporary issues regarding the office of a *qādi* under Islamic law with a glimpse to the Nigerian Legal System.

2. The Office of a *qādi* under Islamic Law

Ordinarily, man cannot live in isolation; hence, the need to cohabit with others, a situation from which misunderstandings are bound to occur intermittently. If there is no sector to attend to these misunderstandings, the society will be in absolute disorder and unrest because the aggrieved persons may be provoked to take law into their hands. In a bid to curb any unfolding rancor, Islamic law has placed some useful mechanisms on ground. These include the office of a *qādi*. This explains why managing a misunderstanding was part of the responsibilities of the messengers of Allah. For example, Allah says:

O Dāwud! Verily, We have placed you as a successor on the earth; so judge between men in truth (and justice)...⁷

In another verse of the Qurʿān, He says:

And remember Dāwud and Sulaiman when they gave judgment in respect of crops...⁸

Similarly, the Prophet (SAW) acted as a judge in many occasions, he equally appointed some of his companions as judges to various districts⁹. The four rightly guided caliphs equally made some judicial appointments during their tenures.

It is against this backdrop that jurists have discerned that office of a *qādi* is *fard kifāyah*¹⁰ and this emphasizes the imperativeness of every

⁶ Q5:8

⁷ Q38:26

⁸ Q.21:78-79

⁹ Cited in [11.3 The appointment of judges - System Of Islam](#) accessed on 14/12/2023 at 8:57pm

¹⁰ It means a collective responsibility which if undertaken by an individual or group of individuals, it releases others from such an obligation. While it is *fard kifayah* on

community must have at least a *qādi* to see and oversee the affairs of humans especially where there is dispute.

2.1 Appointment and Qualifications of *qādi* Under Islamic Law

There is no gainsaying the fact that a *qādi* (judge) is the pillar of an efficient justice system. An unscrupulous judge will definitely corrupt the justice system. Appointment of judges under Islamic law is generally by selection. Islamic jurists are of the opinion that the appointment of *qādi* is obligatory (*fard*).¹¹ In a number of authorities, they seem to be unanimous on the fact that it is the Imām or the Caliph of an Islamic State that has the power to make such appointment. According to Al-Mawardi, ‘to entrust someone with the work of judgment is obligatory for the Imam-caliph, because it is part of his general duties and powers’.¹²

However, the universal principles guiding the appointment of judges (*qādi*) under the Islamic law are summed up in the following attributes: ‘for a man to be appointed a judge, he should be a Muslim, free person, male and “*Mukallaf*” that is to be accountable for all his deeds.¹³ He should possess the capacities to hear and see. He should be literate, intelligent, conscious, scrupulous, upright and should be capable of making independent research and interpretation of the Qur’ān and the *Sunnah* or at least possess the capacity to interpret on the basis of the Qur’ān and the *Sunnah*’.¹⁴

Under the 1999 Constitution of the Federal Republic of Nigeria (as amended), a person is learned in Islamic law if he has bagged a recognized qualification in Islamic personal law from any institution approved by the Federal Judicial Service Commission, Judicial Service Committee of the Federal Capital Territory or State Judicial Service Commission and has held such a qualification for a period not less than

a community, it is *fard ayn* on the ruler whose refusal to appoint a judge becomes a sin especially when he doesn’t have time to adjudicate

¹¹ Al-mawardi A., *Al-Ahkam as-Sultaniyyah* (Ta-Ha Publishers Ltd, London Uk Reprinted 2005) p.98-100

¹² Ibid

¹³ Abdulazeez, Y& Ishola, A.S ‘The Legal Exposition of Abu Ya’la on the Appointment of Qadi’ in *Journal of Fatwa Management and Research* (2017) Vol.9, p.2

¹⁴ Abubakar, H.A, “*Ashalul Madrik*, Darul Fikr”, Lebanon, v. iii p 196

7 years in respect of Area or Shar'iah court judges of the state and not less than 10 years in respect of kadis of Shar'iah Court of Appeal¹⁵ and if in the opinion of the National Judicial Council or State Judicial Service Commission, as the case may be, he has a considerable experience in the practice of Islamic personal law or he is a distinguished scholar of Islamic personal law.¹⁶

In addition, the general principles guiding the appointment of *qādi* in Islamic law system stipulates that for a man to be appointed a *qādi*, he should be a Muslim, free person, male and *Mukallaf* i.e. a person who is accountable for all his deeds. He should not be a physically challenged person; he must not be found wanting of good attributes, he should be of impeccable characters. He should not be deficient in the working knowledge of Arabic Language to enable him dwell into the Qur'ān and the *sunnah* conveniently or at least possess the capacity to interpret what a *Mujtahid* i.e. an expert of Islamic law (jurist) has interpreted on the basis of the Qur'ān and *sunnah* ¹⁷. The Governor appoints a Kadi and Grand Kadi on the recommendation of the National Judicial Council. In the case of Grand Kadi, the appointment needs ratification by the State House of Assembly¹⁸; initiates the appointment, the State Judicial Service Commission forwards the nomination to the National Judicial Service Commission who makes the recommendation, and the State House of Assembly or the National Assembly confirms the appointment before the President or the Governor finally appoints depending on the inherent circumstance.

However, on the qualification of a judge (*qādi*) under Islamic law, it is evident that such a person to be appointed must possess some required qualities for the effective adjudication of matters. These qualifications are of course regarded as indispensable requirements for the

¹⁵ See Sections 261 and 276 of 1999 Constitution of the Federal Republic of Nigeria

¹⁶ Adamu A.,... p. 21

¹⁷ Abubakar H.A (ND) As – halul Madarik, Darul Fikr, Lebanon, pg 196

¹⁸ See s. 276 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). In the case of the Federal Capital Territory, the President appoints the Kadi on the recommendation of National Judicial Council and in the case of the Grand Kadi of the Federal Capital Territory, the appointment is subject to the ratification of the Senate pursuant to s.261 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

appointment of a *qādi* under the Islamic law and scholars have unanimously spelt out some conditions.¹⁹

To start with, it is required that a *qādi* must be a male in addition to having attained legal age of responsibility²⁰ which among other things include puberty (maturity). Anyone who has not attained puberty in fact and in law is irresponsible for his acts and no judgment is made against him on the basis of his speech²¹ and this suggests that he does not pass judgment on others. In addition, a female is not fit and proper to be appointed into the office of a *qādi*²² as well as other administrative and appointive offices albeit judgments may be made on the basis of her statements. However, in Hanafi school of Islamic Legal Thought allows the appointment of a female *qādi*²³ and in Nigeria, the enabling law does not preclude females from being appointed a *qādi*. In essence, a woman may make judgments concerning matters about which she is able to make testimony, but that she may not whenever her testimony is unacceptable.²⁴

Secondly, there is consensus of opinion that it is not enough that a judge's intellect be merely such that his basic powers of perception render him responsible for his actions, but that he is also competent in his faculty of reasoning and that he is able to arrive at an elucidation of any problem by his acuity, and capable of reaching decisions in cases of complexity.²⁵

¹⁹ Al-mawardi A., *Al-Ahkam as-Sultaniyyah* (Ta-Ha Publishers Ltd, London Uk Reprinted 2005) p.98-100

²⁰ Al-Fawzan S., 'A Summary of Islamic Jurisprudence' (Vol.2, Riyadh-Saudi Arabia, 2009) p.698

²¹ This is based on the Hadith of the Prophet who said that: 'Three persons have been exempted (from every kind of obligation and liability) namely, 'the minor until he reaches puberty (adult), the insane until he attains sanity and the sleeping until he is awake'(Quoted by Prof. Dr. Anwarullah, in 'Principles Of Evidence In Islam' (Published by A.S. Noorden) p.4

²² Ismail M.B., *Al-Fiqh Al-Wādhīh Min Al-Kitāb Wa As-Sunnah ʿala Al-Madhāhib Al-arbaʿh* (vol.2, Cairo-Egypt, 1997) p.321

²³ Abul Husayn Ahmad Ibn Muhammad (Translated by Tahir Mahmood Kiani) 'Mukhtasar al-Quduri' (London, UK, 2010) p.529

²⁴ Matthew L, 'Islamic Criminal Law And Procedure: Religious Fundamentalism V. Modern Law' (Boston College International And Comparative Law Review, 1989 Vol. XII, No 1) P 5, <http://lawdigitalcommons.bc.edu/iclr/vol12/iss1/3>. accessed on 2nd-january-2013

²⁵ Al-Fawzan S.,...p.699

Thirdly, he must be a free man because a slave will definitely be entangled by the directives of his master and hence, he has no free will to operate in any guise. It is therefore important to preclude him from passing of judgment or investment with authority²⁶.

Fourthly, he must be a Muslim because it is a condition of being just²⁷. A non-muslim is thus disqualified from being appointed a *qadi*. The Glorious Qurʿān reads

God will never give the *kāffirūn* a way over the *Muminun*²⁸

It is not permitted to appoint a non-Muslim to judge over Muslims. Abu Hanifah, while relying on a Qurʿanic injunction said that a non-Muslim may be appointed a judge between people of his own religion²⁹.

Fifthly, he must be of just character (*ʿāḍil*), he must be free from all doubts, be just when angry, chivalrous and vigorous both in his religion and his worldly affairs³⁰.

The sixth quality provides that a judge must have hearing faculty and his sight must not be defective in order that he may properly attend to people's rights and claims. He must be capable of differentiating the litigants (plaintiff and defendant). His authority is annulled if he is blind. However, a blind person may be appointed as *qādi*. Ibn Taymiyah averred:

According to the analogical deduction of the Hambali School, it is permissible to appoint a blind person as a judge as his testimony is accepted. That is because such a person lacks nothing but seeing the litigants, a thing which he does not need, for he can judge according to description. This is supported by the fact that Prophet Dāwūd (PBUH) judged between two angels. Besides, it tends to be viewed absolutely permissible to appoint a blind man as a judge. In such a case, the blind judge must be told who the witnesses

²⁶ Al-Fawazan S.,...p.698

²⁷ Ibid

²⁸ Q4;140

²⁹ Abul Husayn Ahmad Ibn Muhammad (Translated by Tahir Mahmood Kiani) 'Mukhtasar al-Quduri' (London, UK, 2010) p.529. Also, see Q8;73

³⁰ Salih, A., 'Al-Fiqh Al-Muyassar Fi Douhi Al-Kitab was-Sunnah' (Cairo-Egypt,2015) p.326

are, just as the normal judge is told of the meanings of their speech in case translation is needed. This is because knowing the litigants' identities and getting the meaning of their speech are equally important³¹

Finally, a judge is expected to possess knowledge of the laws of the Shari'ah and his knowledge must extend to the comprehension of its principles and to the execution of legal decisions based on these principles. The principles from which the laws of the Shari'ah are based are four in number; first, he should have the full knowledge of the book of God, so as to enable him to adjudicate properly on various kinds of laws contained in the Book of God, whether it be that of the abrogating or abrogated verses, clear or equivocal, general or particular; second, he must have adequate knowledge of the authentic *Sunnah* of the messenger of God, that is his sayings or deeds, and the way in which they have transmitted- in multiple chains of transmission; third, he must have knowledge of the interpretations arrived at by the first generations- both regarding what they have agreed upon and what they differ on in order that he can follow the consensus and strive to apply his own intellectual judgment in cases of difference; fourth, he must have a knowledge of analogy enabling him to refer matters about which the law is silent to clearly formulate principles accepted by all, such that he knows how to deal with new situations and he is able to differentiate the truth from the false.

Okunola (JCA) In *Husain V. Bagade*³² held that it can be seen that by its nature Islamic law abhors a judge not learned in his proceedings toiling with the sacred law. This is why it is mandatory under the Islamic Legal System that only a man well versed in the science of Islamic jurisprudence should be made a judge. He must not be deficient in seeing and hearing. He must be an *ʿādil* (just).

3. Judicial Ethics and Etiquettes Under Islamic Law

Judicial officers particularly a *qādi* is expected to have code of conduct to guide him both inside and outside the office. This is simply because

³¹ Salih F., ' A Summary of Islamic Jurisprudence' Al-Maiman Publishing House, Riyadh 2005) p 699

³² CA/K/798/89

he plays a sacred role of deciding between two conflicting parties. Previous and contemporary writers have delved into discussions on ethical guidelines of a *qādi*. At this juncture, it is apposite mention that the letter of Caliph ʿUmar to Abu-Mūsa Al-ʿĀshʿari when the latter was appointed as a judge in Kuffa³³ remains a *magnum opus* on the conduct of judges in Islamic law³⁴. The letter contains a number of judicial ethics and etiquettes. Authors³⁵ have outlined the judicial ethics of a *qādi* to include:

1. He must be strong and flexible. In this wise, a *qādi* is expected to be strong to resist external pressure from the ‘who’s who’ and conversely, he should be soft and flexible for the less privileged in a bid to make him the hope for a common man.
2. He must not sit on a matter while he is in a state of anger. This is simply because as human, he is prone to transfer of aggression which may eventually lead to miscarriage of justice. Equally, a *qādi*, while hungry must not adjudicate, he should ensure he dispense the cases before him in a state of comfort and comportment.
3. He must not have secret discourse or affairs with any of the litigants before him.
4. While in session, he should ensure that there are jurists (*fuqahāu*) who will guide him against mistake. He should not see himself as having monopoly of knowledge.
5. He must not receive bribe.
6. He must not involve himself in merchandise except through agents.
7. He must neither sit alone, nor in a panel to adjudicate a matter involving members of his nuclear or extended family.
8. He must be an impartial judge and have equality cum equity as his watchwords.

4. Independence of Judiciary Under Islamic Law

Islamic law constitutes one of the major legal systems in the world today. In many Arab countries, it still forms the basis of the legal

³³ [Caliph Umar's Letter to Abu Musa Al'Ashari - LLB - UIIU - Studocu](#) accessed on 16/12/2023

³⁴ Khashaf (trans. Munghal, M.A) ‘Adab Al-Qadi’ (New Delhi-India) 2018, p.28

³⁵ Khashaf, Al-Fawzan, Ismail, Mutalib, Adamu and host of others

system, though; in many instances, it has been reformed and codified³⁶. Many countries with majority Muslim populations are officially Islamic states and their Constitutions contain provisions to the effect that Islam is the state religion and that all laws should be in conformity with Islam³⁷. The concept of independence of judiciary under Islamic law means the same thing as under common law. It means that the judiciary should be independent, impartial, and full of integrity, equality, competency and diligence. Islamic law recognizes two types of judicial independence³⁸. Institutional independence means the judicial branch is independent from the executive and legislative branches. Decisional independence is the idea that the judge should be able to decide the outcome of a trial solely based on the law and case itself, without letting the media, politics or other things sway their decision.³⁹

The *Khilafah* has an independent high court called the Court of Unjust Acts (*mahkamat al-mazālim*). It is presided over by the most eminent and qualified judge (*Qādi al-Mazālim*) in the state and granted extensive powers by the Shari'ah. What is unique about the Court of Unjust Acts, compared to other judicial courts, is that the Government Investigating Judge (*Qādi al-Mazālim*) has investigatory powers and does not require a plaintiff to register a complaint before launching an investigation. This court will therefore constantly monitor the actions of all officials of the state and the legislation adopted to ensure they conform to Shari'ah and no oppression (*Mazlama*) is committed against the people.⁴⁰ It is to be noted that Hisbah and Mazalim are not strictly courts but they perform quasi-judicial functions⁴¹.

The *Shari'ah* explicitly states that a judge must give an honest, knowledgeable and unbiased judgment on a case. The Prophet (saw) was reported to have said:

³⁶ [Islamic Legal Systems | Judiciaries Worldwide \(fjc.gov\)](#) accessed on 17/12/2023

³⁷ Ibid

³⁸ Alaka, M 'The Independence of Judiciary in Nigeria' in International Journal of Research and Innovation in Social Science' June, 2023 available at ([PDF](#)) [The independence of the judiciary in Nigeria \(researchgate.net\)](#)

³⁹ Ibid

⁴⁰ Taqiuddin an-Nabhani, 'The Ruling System in Islam,' translation of Nizam ul-Hukm fil Islam, Khilafah Publications, p. 220

⁴¹ Zubair A "Introduction to Islamic Constitutional and Administrative Law" (Dawah Foresight Services, Kaduna 2018)p.92

Judges are of three types, one of whom will go to Paradise and two to Hell. The one who will go to Paradise is a man who knows what is right and gives judgment accordingly; but a man who knows what is right and acts tyrannically in his judgment will go to Hell; and a man who gives judgment for people when he is ignorant will go to Hell⁴²

The Shar'iah also specifies how the judge should act within the judicial court sitting. The Messenger of Allah (S.A.W.) said;

Whoever Allah tests by letting him become a judge, should not let one party of dispute sit near him without bringing the other party to sit near him. And he should fear Allah by his sitting, his looking to both of them and his judging them, he should be careful not to look down to one as if the other is higher, he should be careful not to shout to one and not the other, and he should be careful of both of them.⁴³

Al-Mawardi explains some of the specific qualities needed by *Qādi al-Mazālim* due to his important position within the state. Judicial investigation of wrongs or abuses is concerned with leading those who have committed wrongs to just behavior by instilling fear in them, and with dissuading litigants from undue obstinacy in their disputes by instilling a feeling of respect⁴⁴. Thus among the qualities demanded of the judicial investigator is that he be of imposing stature, that he ensures action follows his words, that he commands great respect, is manifestly correct in his keeping within moral bounds. However, whilst the Qur'an itself does not contain any express provision on the independence of the judiciary there is nevertheless a number of contemporary statements of Islamic law which stress the importance of independence of the judiciary. The Supreme Court of Pakistan observed in the case of *Al-Jehad Trust v Federation of Pakistan*⁴⁵ that:

Upon the advent of Islam, judicial functions were separated from the executive functions at its very initial stage ... The reason being that the foundation of Islam is justice. The

⁴² Sunan Abi-Dawud, Book 24, Number 3566: Narrated by Buraydah ibn al-Hasib

⁴³ Baihaqi, darqutni, tabarani

⁴⁴ Abul-Hassan Al-mawardi 'Al-Ahkam As-Sultaniyah Wal-Wilayat Ad-Diniyyah' (Ta-Ha Publishers, Uk. 2018p. 78)

⁴⁵ PLD (1996) SC 324, at 424.

concept of justice in Islam is different from the concept of the remedial justice of the Greeks, the natural justice of the Romans or the formal justice of the Anglo-Saxons. Justice in Islam seeks to attain a higher standard of what we may call 'absolute justice' or 'absolute fairness'

5. Office of a *qādi* and the Nigerian Legal System

Under this heading, this paper intends to discuss albeit in brief some contemporary issues revolving round the office a *qādi* as obtainable in the Nigerian Legal System.

1. *The Mode of Appointment*
2. *Lobbying for the office of qādi*
3. *The observance of legal year*

i. The Mode of Appointment

Generally speaking, the appointment into the office of a *qādi* ought to be on merit and scholarship, not otherwise. For example, in Nigeria, the Governor appoints in the case of State Shari'ah Court of Appeal and the President in the case of Shari'ah Court of Appeal of the Federal Capital Territory, Abuja⁴⁶ and this is not enough to ensure the appointment is meritorious. This is simply because, a number of qualities of a potential qadi as mentioned by Islamic law are absent.

It needs to be mentioned that the present mode of appointment needs to be amended to pave way for the involvement of Islamic scholars for their inputs in order to make such appointment Islamic compliant. In addition, the law stipulates that a degree in Islamic Studies is a requisite *in lieu* of LL.B but the reverse is the case in practice, B.A (Arabic) are now being considered at the expense of required degree in Islamic Studies and in fact, LL.B⁴⁷. As a matter of fact, going through the four walls of classroom should not be a condition for the appointment of a *qādi* since there are *malams* who are seriously sound in the knowledge of Shari'ah. They should be considered and given equal attention given

⁴⁶ Pursuant to s.276 and 261 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

⁴⁷ Interview with Hon. Justice I.A Harron (Retired Grand Kad of Kwara State) on 11/08/2023

to degree holders. In conclusion, the local *alkalis* be restored and such appointment is made at the instant of a sitting emir⁴⁸.

ii. Lobbying for the Office of a *Qādi*

As stated earlier, the appointment of *qādi* must be strictly based on merit and qualification as outlined by Shari'ah; it must be devoid of lobby and other external negative features. This simply means that a *qādi*, two or three days prior to his appointment must not know of his appointment. It is on record that Abu-Qulabah was called to be a judge and he ran towards Syria⁴⁹ and this shows the delicate nature of the office of a judge. However, according to a retired Grand Kadi of Kwara State, one can lobby to be a *qādi* since Prophet Yusuf lobbied and that gives a precedent that you can lobby if you are very sure of your competence⁵⁰.

Across the federation, it can be aptly presumed that the appointment of a *qādi* is now premised on who you know and not what Islamic Law stipulates. But in recent times, efforts have been made to curb this. For example, the Federal Judicial Council and National Judicial Commission now wage war against favoritism in the appointment of judicial officers in the country⁵¹.

iii. The Observance of Legal Year

Briefly speaking, a legal year is observed at the beginning of each lunar year⁵² to commemorate the emergence of a new year of judicial activities. In this event, President/Governors and top government functionaries are being invited and unconsciously, turning the occasion to be a political gathering. Furthermore, the celebration of legal year seems to be a foreign ideology to judicial arm under Islamic law.

⁴⁸ *ibid*

⁴⁹ Imam Kashaf...p.31

⁵⁰ This was the opinion of My Lord, Justice Salihu Olohuntoyin Muhammad, the Present Grand Kadi of Kwara State. The interview was conducted on the 13th of March, 2015 at his office at about 04:15PM

⁵¹ *Ibid*

⁵² According to the Chief Bailiff of the Kwara State Sharia Court of Appeal, Mr. Mashood Lawal, the legal year of the court holds between Muharram and Safar of every new lunar year.

Besides, we find it difficult to link the observance of legal year to any provision of Islamic law and thus, it ought to be defined and re-defined.

6. Conclusion/Recommendation

From the foregoing, it is apparent that in Shariah Courts, appointment of judges is a crucial issue. The judiciary is the heart of a constituted society saddled with the responsibility of maintaining justice and peace in the society. It follows logically that the mode of appointment thereat and the independence of the judiciary must be taken as very important. Section 276 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) needs to be amended to cater for the pristine Islamic law regulations in relation to the office of a *qādi*. This is because by the constitution, a female, non-Muslim and a legally irresponsible person can be appointed as a *qādi*. All these are anathema to what has been spelt out by the Shari'ah.

Thus, it would be apposite to say that since the appointment into the judiciary under Islamic law hinges on divine law, justice must be administered as it is a fundamental attribute of any art of good governance. In essence, it presupposes that a society that upholds justice in all its affairs shall have peace while any society that fails to render justice is considered to have failed in its duty to God. Therefore, great importance should be attached to the administration of justice and every institution responsible for its administration must be manned by competent and expert personnel for effective administration of justice.