

DO LAWYERS REALLY HAVE A RIGHT OF AUDIENCE IN THE SHARIA COURT OF APPEAL IN NIGERIA?

Karimatu Yakubu and Anor v Alhaji Yakubu Paiko and Anor Revisited. *

1.1 INTRODUCTION

In *Karimatu Yakubu and Anor v Alhaji Yakubu Paiko and Anor*,¹ the Court of Appeal decided that under the 1979 Constitution of the Federal Republic of Nigeria, legal practitioners have a right of audience in the Sharia Court of Appeal. Although, the 1979 Constitution has now been replaced by the 1999 Constitution, this decision is still law because the relevant provisions of both constitutions on the issue are in *pari materia*. But is *Karimatu's case* a good law? This paper examines and answers this question.

2.2 THE POSITION BEFORE THE JUDGEMENT

Hitherto, legal practitioners do not appear in Sharia Courts of Appeal because they were expressly prohibited from doing so. Section 20 of the Sharia Court of Appeal Law² provided as follows:

- (1) No legal practitioner may appear to act for or assist any party before the Court.

The only form of representation permitted in the court was stated in sub section (2) of the same section thus:

In any proceedings before it, the Court may permit the appearance on behalf of any party to such proceedings of –

- (a) the husband, wife, guardian, servant, master or any inmate of the household of any party, who shall give satisfactory proof that he or she has authority in that behalf; or
 - (b) a relative of any person who is interested in the administration of the estate of a person who was subject to the jurisdiction of a native court.
- (2) Subject to the provisions of subsections (1) and (2) in any suit before the Court a native authority may be represented at any stage of the proceedings by any officer of the native authority who satisfies the court that he is duly authorised in that behalf.
 - (3) A native court's adviser shall have the right to be heard in the Court.

The basis of the prohibition of lawyers from appearing in Sharia Court of Appeal is in the jurisdiction and type of law administered by the Court. Section 11 of the Sharia Court of Appeal law provided that:

The Court shall be competent to decide –

- (a) any question of Islamic personal law regarding a 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 marriage and relating to family relationship or guardianship of an infant;
- (b) where all the parties to the proceedings are moslems, any question of moslem law regarding a marriage, including the validity or dissolution of such a marriage regarding family relationship, a foundling or guardianship of an infant;
- (c) any question of moslem law regarding a *wakf*, gift, will or succession where the endower, donor, testator or deceased is a moslem;
- (d) any question of moslem law regarding an infant, prodigal or person of unsound mind who is a moslem or the maintenance or guardianship of a moslem who is physically or mentally infirm; or
- (e) where all the parties to the proceedings (whether or not they are Moslems) have by writing under their hand requested the court that hears the case in the first instance to determine that case in accordance with Moslem Law, any other question.³

This was re-enacted with a slight modifications as the jurisdiction of the S
t of Appeal in the 1979 and 1999 Constitutions.⁴

on 14 of the Sharia Court of Appeal Law further provides that:

The court, in exercise of the jurisdiction vested in it by this Law as
ds both substantive law and practice and procedure, shall administer,
ve and enforce the observance of, the principles and provisions of –

- (a) Moslem law of the Maliki School as customarily interpreted at the place where the trial at first instance took place;
- (b) this Law;
- (c) the native courts law and any other law affecting native courts in so far as it appertains to a cause or matter within section 112 of this Law; and
- (d) Natural justice, equity and good conscience.

Thus, it is clear from the court's jurisdiction and the type of law applied therein, that legal practitioners who are trained in the English style common law have no relevance in the Sharia Court of Appeal.

Another reason for prohibition of lawyers in the Sharia Court of Appeal (as will be seen later here) is that legal representation as in common law is unknown to Islamic law.

3.3 **THE DECISION OF THE COURT OF APPEAL IN KARIMATU'S CASE**

In spite of the foregoing, the Court of Appeal gave legal practitioners an unrestricted and unfettered access to the Sharia Court of Appeal. The court relied particularly on section 33 of the 1979 Constitution.⁵

In criminal cases, any person charged with a criminal offence, is entitled to defend himself through legal practitioners of his own choice and such legal practitioner cannot be excluded from the trial.⁶ Since the Sharia Court of Appeal does not have criminal jurisdiction, the right to counsel in criminal cases is not relevant to it.

With regard to civil cases, the Court of Appeal held that the same right to counsel is applicable to both criminal and civil cases. The main thrust of the court's reasoning per Wali JCA delivering the judgement of the court is as follows:

I shall endeavour in this judgement, to show that under the constitution, even in civil trials or appeals, no court or tribunal in this country has the power to exclude a legal practitioner from representing any person before it.

I will first refer to the provisions of s. 33 (1) of the constitution which provides:

“33(1): In the determination of the civil rights and obligation, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality.”

This section opens with reference to a party's civil rights and obligations. Now under subsection (13) of section 33 it has been provided that:

The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsection (1) and (4) of this section [including the announcement of decisions of the court or tribunal] shall be in public.

Provided that:

- (a) a court or such tribunal may exclude from its proceedings persons other than parties thereto or their legal practitioners in the

interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of 18 years, the protection of private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interest of justice” [Emphasis by the court]

Under the foregoing provisions of the Constitution, it is clear direction that whenever a court is dealing with civil as well as criminal matters, it cannot exclude from its proceedings parties or their legal representatives. In other words, the intention of the of the legislature here is so clear that once a legal practitioner presents himself before any court or tribunal established under the law representing a party involved or interested in the proceedings before it, he cannot be denied right of audience in such proceedings. It is a party’s right to be represented by a legal practitioner of his choice and who has satisfied the requirements of Legal Practitioners Act 1962 and has been properly enrolled by the Council of Legal Education as a legal practitioner.⁷

The court fortified itself by referring to section 22 (5) of the 1963 Constitution which read thus:

Every person who is charged with a criminal offence shall be entitled –

- (e) to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the offence:

Provided that nothing in this sub-section shall invalidate any law by reason only that the law prohibits legal representation in a court established by or under the Native Courts law, 1956, the Sharia Court of Appeal Law 1960, or the Court of Resolution Law, 1960 of Northern Nigeria...

According to the court the “deliberate omission” of an equivalent proviso in the 1979 Constitution shows that those three laws are not meant to be part of the existing law saved by section 274(1) of the 1979 constitution. The court concluded that “s. 20 of the Sharia Court of Appeal Law in so far as it prohibits legal presentation by a qualified legal practitioner, is void”⁸

On the issue of “Sharia rules as to legal representation” raised by the Sharia Court of Appeal, the Court of Appeal held thus:

If they [the Kadis in SCA] interpreted legal representation to embrace appearance of lawyers in their courts, I will say that there is no such separate arrangement made by any statutory law for lawyers appearing before the Sharia Court of Appeal. To emphasize what I have said earlier in this judgment, that once a lawyer has been enrolled to practice in Nigeria by the Council of Legal education, no court shall put additional qualification on him as a prerequisite to his appearance before it. This is the current position under the Constitution and other valid and subsisting statutory enactments. Any other additional requirements or practice, as far as legal representation is concerned must be within the provisions of the Legal Practitioners Act, 1962. The Sharia Court of Appeal was in error to exclude a legal practitioner from appearing before it to represent a party’s interest. The learned Kadis are also wrong to say that there could not be plurality of legal representation in their courts. Any number of lawyers could appear and represent litigants in any court established under the Constitution or any other law.

4.4 ANALYSIS OF THE JUDGMENT

The main issue that concerns us in this appeal is the issue of legal representation. This again divides into two issues – the issues of right of representation under the Constitution argued by counsel and legal representation under Islamic law raised by the Sharia Court of Appeal. The judgement of the Court of Appeal on these two issues is most unsatisfactory.

4.4.1 THE RIGHT TO REPRESENTATION UNDER THE CONSTITUTION

With regard to the right to counsel guaranteed by the Constitution, the Court of Appeal had no basis to make the inferences and deductions it did from the Constitution on the right to counsel in criminal cases. With all due respect, to the learned Justices of the Court of Appeal, the judgement of the court was based on an erroneous interpretation of section 33 of the 1979 Constitution. In the first place, the court (as reported in Sh. L. R. N)⁹ relied on a phantom section 33 (13) (a) which does not exist in the Constitution! In the second place, their “section 33(13)(a)” could in the context of the Constitution have only meant section 33 (3). But then that subsection does not have a paragraph (a)! Only

subsection (4) does. Again, the court cited section 33 (3) wrongly thus:

The proceedings of a court or the proceeding of any tribunal relating to the matters mentioned in subsection (1) and (4) of this section [including the announcement of decisions of the court or tribunal] shall be in the open.¹⁰ (*Emphasis mine*).

The words, which I have emphasised, are not part of the Constitution. They were interposed by the court.

For a proper discussion of the effect of these factual errors by the court, it is necessary here to reproduce the correct version of the relevant parts of section 33 of the 1979 Constitution.¹¹

33 (1) In the determination of the civil rights and obligation, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence.

(3) The proceedings of a court or the proceeding of any tribunal relating to the matters mentioned in *subsection (1) of this section* [including the announcement of decisions of the court or tribunal] shall be in the open.¹² (*Emphasis mine*).

(4) Whenever any person is *charged with a criminal offence*, he shall unless the charge is withdrawn be entitled to a fair hearing in public within a reasonable time by a court or tribunal:

Provided that –

(a) a court or such tribunal may exclude from its proceedings persons other than parties thereto or their legal practitioners in the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of 18 years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice.¹³ (*Emphasis mine*)

The significance of these provisions is that subsection (1) related to civil cases while subsection (4) related to criminal cases.

Again, the proviso which prevents the exclusion of legal practitioners from the court relied upon by the court refers to sub section (4) and not to subsection (3). It is clear that this proviso related to criminal matters only which is the matter referred to in subsection (4). It is therefore not proper for the court to conclude as it did that:

Under the foregoing provisions of the Constitution, it is clear direction that whenever a court is dealing with civil as well as criminal matters, it cannot exclude from its proceedings parties or their legal representatives.¹¹

Lastly, the proviso contained in section 22 (5) of the 1963 Constitution which was omitted in the 1979 constitution, which omission the Court of Appeal placed so much reliance again, related only to criminal cases. It did not apply to civil cases. It is, with all due respect, incorrect to deduce as the court did that this omission shows the intention of the 1979 Constitution to allow lawyers in all cases. Under the 1963, the proviso to subsection 22 (5) operated to limit the application of the unrestricted right to counsel in criminal cases granted by section 22 (5) (c) of the same Constitution. The proviso to Section 22 (5) (e) of the 1963 Constitution could not be invoked as barring lawyers in civil cases before the Sharia Court of Appeal. During the period of the 1963 Constitution, the law barring lawyers from appearing in Sharia Court of Appeal is found in section 20 (1) of the Sharia Court of Appeal Law. The omission of an equivalent of section 22 (5) in the 1979 Constitution could at best be interpreted as allowing lawyers in Sharia Court of Appeal in criminal cases. However, as pointed out earlier, the court does not have any criminal jurisdiction.

4.4.2 LEGAL REPRESENTATION UNDER ISLAMIC LAW

The second issue arising out of legal representation is whether lawyers are permitted in Islamic law. Unfortunately, the Court of Appeal on this matter evaded the substance of the argument of the learned Kadis of the Sharia Court of Appeal. The relevant part of the judgement of the Sharia Court of Appeal was quoted by the court of Appeal thus:

... the lawyer, who stood for Karimatu, Respondent No. 1 has declared before the court that he did not know the rules and procedure of Islamic law relating to legal representation and he has not known the legal requirements for such representation least to explain himself so as to be accepted by this court as to whether his representation of Karimatu is genuine and in accordance with Sharia Rules. However, even if the lawyer knew such rules and regulations for representation, since he is not one of the category of persons specified under Sharia Court of Appeal Law as contained under Section 20 of the Law, this court has no ground to accept the lawyer who intended to represent the respondent No. 1. Therefore we advised him to leave.¹²

The comment of the Court of Appeal on this is as follows:

....the learned Kadis have failed to explain what they meant by: "Sharia rules as to legal representation"
If they [the Kadis in SCA] interpreted legal representation to embrace appearance of lawyers in their courts, I will say that there is no such separate arrangement made by any statutory law for lawyers appearing before the Sharia Court of Appeal. To emphasize what I have said earlier in this judgment, that once a lawyer has been enrolled to practice in Nigeria by the Council of Legal education, no court shall put additional qualification on him as a prerequisite to his appearance before it.¹⁶

With due deference to the Court of Appeal, the central matter here is that the common law type of lawyers are unknown to Islamic law. The Court of Appeal took time to enunciate their disagreement with the relatively immaterial assertion of the Sharia Court of Appeal regarding the plurality of legal representation but avoided facing the question as to whether lawyers in the common law mould are permitted in Islamic law. The Court of Appeal was clearly aware of the problem as shown the court's reaction of the text of *Mawahibul Jalil Li Sharhi Mukhtasar Khalil* cited by the Sharia Court of Appeal on plurality of representation:

The concept of representation referred to in the text reproduced above is not the same as legal representation provided for under the Legal Practitioners Act 1962. In any event, the Islamic provision is not strictly for legal representation. Such a representation is nothing more than an agent and who should represent a party in an action. He is further controlled by certain conditions which when explained in fuller detail would show that it is a typical agent/principal's relationship. See *Ruxton on Maliki Law* p. 201.¹⁷

Later the Court of Appeal quoted from *Bahjah* one of the leading Islamic law books as follows:

It is not allowed for any man or woman to have more than one representative [I will not call him legal because the law does not say so] in any action except in matters concerning trade [buying and selling] or other litigation.¹⁸

The Court of Appeal's awareness of the non-existence of "lawyers" in Islamic law is shown by the first set of bracketed words. The brackets are the Court of Appeal's and

are very significant. The sort of representation permitted in Islamic law is different as elliptically acknowledged by the Court of Appeal itself.

The learned justices of the Court of Appeal should have taken the opportunity to tell us whether or not lawyers as advocates are allowed in Islamic law rather, they decided the appeal as if lawyers are the regular feature in Islamic law.

Lawyers in the common law mould are not acceptable in Islamic law. However, some do confuse the *Wikalah* and *Muftis* with lawyers.¹⁹ Islamic law permits representation in legal matters. This is what section of the Sharia Court of Appeal Law quoted above attempted to give effect to. The representation is called *Wikalah*.²⁰ This was the representative described by the Court of Appeal in the quotation above. His role is that of an agent rather than advocate. Unlike the common law practitioner, he has no special privileges in court. He is not an "officer of the court". He does not sit at the bar nor belong to any professional legal body. He represents the client and has the same status in court as his client has. *Muftis* are legal consultants who offer legal advice to both litigants and judges alike. Adewoye summarised the role of muftis in the Sokoto Caliphate as follows:

In judicial matters, *alkalai* or learned jurists were appointed to administer the shari'a which was a body of Islamic laws, both civil and criminal.....In such centres of Islam as Sokoto, Kano, Zaria, they sometimes sought the assistance of the *mufti*, learned mallams who are deeply knowledgeable about the *shari'a*. Their duty was to expound the law. They were like the *jurisconsults* of the Roman times, except that their judicial opinion was invariably based on actual cases and precedents. They gave their opinions in the open court upon questions submitted to them by the *alkali*. Although they were the expounders of the *shari'a* law, they differ from professional advocates in the European sense in that they could not be engaged to fight partisan causes in open court. Privately, of course, they could be consulted on any legal question. Usually important figures in the state performing other functions, they did not derive their livelihood from their role as expounders of the law.²¹

4.4.3

THE DOCTRINE OF PRECEDENT APPLY UNDER ISLAMIC LAW

This appeal also illustrates several of the thorny issues in the administration of Islamic law in Nigeria. The Court of Appeal castigated the Sharia Court of Appeal for

citing the case of *Isa v Bawa* which was decided by "some of our learned Sharia Court of Appeal judges" and reaching a conclusion inconsistent with it without commenting on whether they agreed with the case or not.²² With all due respect, to the learned judges of the Court of Appeal, they have missed the point in this. The point is that unlike the common law, the doctrine of judicial precedent (*stare decisis*) is not acceptable in Islamic law. In Islamic law, every judge is free to reach his own decision without being bound by the judgement of any other court. This point was vividly brought out by Hon. Justices Gwarzo and Kalgo in *Chamberlain v Danfulani*²³ but with very different reactions! Kalgo J, reacted thus:

In deciding this issue, this court will be guided by established authorities on this point. I am not unaware of the fact that in Islamic Law, there is no binding principle of precedents as we have in English type of courts.²⁴

Hon Justice Gwarzo in his dissenting judgment eloquently defended and adhered to the Islamic law position:

With greatest respect, I am of the opinion that that has not been so. So the question of disputing their *ratio decidendi* does not arise. Even if it does, if we are to be bound or guided by Islamic law, then the prescription in Islamic law places the law always supreme. There is no question of relying on higher or lower courts interpretation when the prescription of law is vividly clear.

In Islamic Law a judge is not bound by a precedent in a case which is similar. See Commentary of *Mukhtsar Khalil*, Vol. 2, entitled '*Jawahir al-Iklil*' page 30. Thus, if a judge gave judgement in a case, then a similar case came, his judgment in the similar case will not extend to a case which is similar to the one in which he gave judgement in the first instance because trying a case is non-integral, but, if a similar case arose after the first judgment between same litigants or others, independent examination is required by law from the first judge or another judge.²⁵

Both judges agreed as to the irrelevance of *stare decisis* in Islamic law but they differed irreconcilably in their reaction. The reason for the difference between both judges is simple. Justice Gwarzo was a Grand Kadi while Justice Kalgo was a Judge of the High Court. This aptly illustrated the loyalty crisis amongst Muslims lawyers and judges when it comes to Islamic law. Muslims trained in the common law tend to accept without question the 'supremacy' and 'superiority' of the common law.²⁶

There is also the rivalry between Kadis and common law judges. The qualifications for appointment as a justice of the Court of Appeal and that of the Supreme Court differ from those required for appointment as a kadi of the Sharia Court of Appeal.²⁷ In the circumstances, rivalry more or less inevitable. The justices of the Court of Appeal and the Supreme Court come from the pool of legal practitioners trained in common law. That is their basic qualification. The justices appointed for being also knowledgeable in Islamic law are basically lawyers too. Their orientation is largely towards the common law. They inevitably look down on kadis for their want of learning in common law! The Kadis too tend to look at legal practitioners as inferior in Islamic law learning and with justification too. Islamic law requires many years to master. The justices of the Court of Appeal for all their learning cannot rightly claim mastery of Islamic law. It is not surprising therefore, that they are not regarded by the Muslim populace as leading Islamic law specialists! Whereas, the Kadis command more respect and are more acceptable to the Muslim populace as persons learned in Islamic law. The regrettable irony is that it is the justices of the Court of Appeal who hear appeals from the Sharia Court of Appeal and not vice versa. With the current revival of Islamic law in Nigeria pioneered by Zamfara State, it is expected that this situation will not remain as it is. The recommendation of the Constitution Drafting Committee that was responsible for the 1979 Constitution is still relevant. The Committee recommended that a Federal Sharia Court of Appeal be established at Federal level to hear appeals from the Sharia Courts of Appeal of the States.²⁸ The 1999 Constitution provides that appeals from the Sharia Court of Appeal is heard by at least three justices of the Court of Appeal who are learned in Islamic personal law.²⁹ The inadequacy of this is that the justices of the Court of Appeal so appointed are basically and primarily legal practitioners.³⁰ Non-legal practitioners who are learned in Islamic law are not qualified under the Constitution for appointment as justices of the Court of Appeal.

Another aspect of lawyers appearing in the Sharia court of Appeal has to do with religion. There is no religious requirement for legal practitioners appearing in the Sharia Court of Appeal. This means that non-Muslims now appear and argue cases before the court. Non-Muslims can no longer take their cases to the Sharia Court of Appeal even if they so desire. The Constitution has now totally excluded them from the jurisdiction of the court.³¹ Given the well-known aversion of some non-Muslims to Islamic law, what are non-Muslims lawyers (whose academic and professional training are completely devoid of Islamic law) doing in the Sharia Court of Appeal?

Lastly, lawyers may think that their absence in the Islamic system invariably mean denial of fundamental rights and absence of justice. This is not true. The Islamic system is radically different from the common law system.³² The Islamic law system is not a complicated system of law. It is easily understood by all. Anyone can successfully conduct his or her case before the Islamic courts. This is unlike the common law system

which is contentious, complicated and very technical.³³ It is virtually impossible for an educated person no matter his level of education to conduct his own case in the High Court not to talk of the Court of Appeal and the Supreme Court. Apart from complicated rules of substantive law, there are more complicated rules of procedure which even lawyers do not always find easy to unravel. Secondly, judges in the Islamic law system play a role, which is more dynamic than that of judges under the common law system. Islamic law judges have a sacred duty to ensure that justice is done according to the law, that is, no one will lose any case on technicalities. It is the duty of the judge to explain points of law relating to evidence, procedure and substantive law to the parties. The judge guides both parties in legal matters applicable to their case.³⁴ The common law approach is that the judge is 'blind and impartial', therefore the fate of a litigant may depend on the skill of his counsel rather than on the merits of his case.³⁵

Thus, in the final analysis, the Islamic law system is cheaper, faster and more just than the common law system.³⁶

5.5. CONCLUSION

The decision in *Karimatu Paiko's* case has been interpreted as granting lawyers right of audience in civil cases not only in the Sharia Court of Appeal but in all other courts including the Area Courts. It is humbly submitted that *Karimatu Paiko's* case was wrongly decided. It is a decision that cannot be supported either by reference to the Constitution or to Islamic law. Now that Islamic law in its pristine form is being introduced in several States in the country and Sharia Courts of first instance³⁷ are being created in addition to the existing Sharia Court of Appeal, the issue of legal practitioners appearing in Islamic law courts will be re-opened and passionately argued in the near future. It will be very difficult to support the decision in *Karimatu Paiko's case*. Apart from the issues highlighted already in this paper, it should also be noted that counsel in *Karimatu's case* conceded the issue of appearance of legal practitioners in the Sharia Court of Appeal. Thus the issue was not debated nor adequately addressed by counsel in the appeal. Secondly, the case was not well reported.³⁸ Therefore, effect was given to the judgement by lawyers most of whom never saw nor read the judgement. Thirdly and lastly, there was no appeal against the judgement of the Court of Appeal. This means that a final pronouncement on the issue has not been made by the Supreme Court. The Sharia Court of Appeal does not administer common law, nor do legal practitioners whose primary training is in common law have any business or relevance in the court. Lawyers should be restricted to courts dealing with English style law and Islamic law left to those learned in Islamic law.

Although *Karimatu Paiko's* case has now stood for more than a decade and half, it is never too late to correct the error.

END NOTES AND REFERENCES

A. A Oba, Lecturer, Department of Jurisprudence and International Law,
University of Ilorin,

Appeal No. CA/K/80S/85 decided by the Court of Appeal, Kaduna Division on 11 December 1985. See text of the judgement in Yahaya Mahmood (ed.), *Sharia Law Reports of Nigeria*, Vol. 1, (1961 - 1989) (Ibadan: Spectrum, 1993) pp. 126 – 141. This book is cited as “1 Sh. L. R. N”.

Cap. 122, Laws of Northern Nigeria, 1963.

See also section 53 (5) (e), of the defunct Constitution of the Northern Nigeria, 1963, Cap. 1, Laws of Northern Nigeria, 1963.

The main difference relates to “Moslem law” and “Islamic personal law” used in subsection (e). In the 1979 and 1999 Constitutions “Islamic personal law” is used throughout instead of “Moslem law”. In the 1979 Constitution subsection 242 (2) (e), reads: “Where all the parties to the proceedings, (whether or not they are moslems) have requested the court that hears the case in the first instance to determine that case in accordance with Islamic personal law, any other question.” While in the 1999 Constitution section 262 (2) (e) and 277 (2) (e) read: “Where all the parties to the proceedings, being muslims have requested the court that hears the case in the first instance to determine that case in accordance with Islamic personal law, any other question.”

Now section 36, 1999 Constitution.

Section 33 (4) (a), 1979 Constitution now section 36 (4) (a), 1999 Constitution.

At pp. 133 – 134 of the judgment.

Ibid, p. 135.

That is Yahaya Mahmood, *op cit*. I have not been able to lay my hands on another report of the judgement.

1. *Ibid*, at p. 133.

2. I use the official edition published by the Federal Ministry of Information, Lagos (FGN 1623/1078/50,000).

3. At p. 133.

4. This section is now section 36, 1999 Constitution.

5. At p. 135.

6. P. 132.

7. At pp. 135-136.

8. At p. 136.

9. *Ibid*.

10. Some confused by the common law make sweeping statement capable of misinterpretation. For example, Ambali, writing on the desirability of taking judicial appointment wrote: “There is neither a single Quranic verse nor a tradition of the Holy Prophet [SAW] that declares the practice of law at the Bar or on the Bench as

- (*Haram*) forbidden": Ambali, *The Practice of Muslim Family Law in Nigeria* (Zaria: Tamaza, 1998) pp. 75 – 80. He offered no authority for his proposition concerning practice at the Bar.
1. See Zubair, "Legal Aid and Legal Representation in *Shari'ah* vis-à-vis the Nigerian Case", (1996) *Kwara Law Review* Vol. 5, pp. 63 – 65.
 1. O. Adewoye, *The Legal Profession in Nigeria 1865 - 1962*, (Nigeria: Longman, 1977) pp. 2-3.
 2. P. 138.
 3. 1 Sh. L. R. N 55.
 4. Ibid, at p. 59.
 5. Ibid, at pp. 60 – 61.
 5. This has tremble spiritual consequences on such lawyers: Abdulmalik Bappa Mahmud, *A Brief History of Shari'ah in the defunct Northern Nigeria* (Jos University Press, 1988) pp. 45, 55 - 59.
 7. See sections 231 (3); 238 (3); 261 (3) and 276 (3) 1999 Constitution.
 8. See: *Report of the Constitution Drafting Committee*, Vol. II, (Federal Ministry of Information, 1976) pp. 113.
 9. Section 247 (1) (a), 1999 Constitution.
 0. Section 288 (1) (a), 1999 Constitution
 1. Section 53 (5) (e), of the defunct Constitution of the Northern Nigeria, 1963 and section 11, Sharia Court of Appeal Law (both quoted supra) allowed non-Muslims to opt for Islamic law. Now section 262 (2) (e) and section 277 (2) (e), 1999 Constitution has completely excluded non-Muslims from the jurisdiction of the court.
 2. For a summary of the Islamic procedure, see Suhrawardy and Russell, *The First Steps in Islamic Law in West Africa* (Lagos: IPB, 1986) pp. 98 – 103. The analysis of the differences between the common law and the Islamic law procedures is the subject on another paper on file with the author. See also Justice Orire, "Sharia and Common Law II", *Sunday Herald*, March 31, 1985, p. 10.
 3. See comments on the criticisms of the common law procedure in Granville Williams, *The Proof of Guilt* (Stevens, 1963) pp. 29 – 35.
 4. See Zubair, *Legal Practice...*, op cit at p. 61 and Adewoye, op cit, p. 2.
 5. See Aguda, *The Crisis of Justice*, (Akure, 1986) pp. 12 – 14 and Wooton, *Crime and the Criminal Law* (Stevens, second edition, 1981) p.32.
 6. Litigation in the common law system can be very expensive. See: Aguda, op cit. p 32 and 42.
 17. These courts are exclusively created to administer only Islamic Law.
 18. The only report of the case that this writer knows of is that in Yahaya Mahmood (ed.) used in this paper.