



**ISLAMIC UNIVERSITY
IN
UGANDA**

COMPARATIVE LAW JOURNAL
(IUIUCLJ)

IUIUCLJ. VOL 6, ISSUE 1, 2019

THE LAWS GOVERNING KADHIS' COURTS IN ZANZIBAR ,TANZANIA AND AREA COURTS IN KWARA STATE ,NIGERIA

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Abstract:

Islamic law is of great impact to adjudication process on Muslim personal matters in different regions of Africa. This legal system has been in usage among different peoples of Africa sub-regions since post-colonial era. This paper attempts to evaluate the issue of legal framework of Kadhis" Courts in Zanzibar and Kwara State of Nigeria. The term legal framework as well as the variations in the courts structure of the two regions of Africa will be examined in detail hereinafter. For the purpose of this discourse, our main concern will be on the hierarchal arrangement of the courts system with special focus on the Kadhis" Courts structure and the appropriate constitutional provisions for the existence of the Kadhis" Courts in these different regions of Africa. Essentially, this paper makes use of library research to evaluate the subject matter of the study. Also the paper examines the official jurisprudence of each region and its impact on adjudication process on Muslim personal matters in Zanzibar and Kwara State of Nigeria.

KEYWORDS: Kadhis' Courts; Area Courts; Islamic Jurisprudence; Zanzibar; Kwara State

Introduction

Islamic law or Sharia focuses on maintenance of law and order, and assists to safeguard peaceful governance and co-existence in nations with colonial legal system background.² Many nations with sizeable Muslim population have dual system in which the government is secular in nature but allows Muslim personal matters to be resolved in Kadhis' or Sharia Courts. These courts have jurisdiction on matters like marriage, divorce, inheritance, and guardianship. Notable examples of countries with such dual legal systems are Nigeria.³ The Constitution of Zanzibar recognizes the existence of Kadhis.⁴The peoples of Zanzibar and Nigeria are of sizeable number of Muslim population; belong to *Al-Shafii* and *Imam Maliki* schools of jurisprudence. *Al-Shafii* doctrine distinguishes between the spiritual and secular aspects of Islam. It

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²Okon, E.E., Islamic Jurisprudence and the Primacy of Sharia. International Journal of Asian Social Sciences. 3(3) 138-139, 2013, p. 149.

³ Johnson, T., & Aly Segie. Islam: Governing under Sharia. Sharia Council on Foreign Relations. <http://www.cfr/religion/islam-governing-undersharia/pso>. Accessed on 2nd March, 2016.

⁴ Act No. 3, of the Kadhis Act, 1985.

follows precedent from non-Islamic law and focuses on the merits of individual cases.⁵ The *Maliki* school of thought relies on precedents of the prophet Mohammad as supplements to clarification on the Quran, the divine document of Islam.⁶

Historical background of Justice System of Tanzania

The United Republic of Tanzania is a nation with two judicial systems since the post-colonial era.⁷ The country is located along the east coast of Africa has a unique legal system. This country is bounded in the north by Uganda and Kenya in the south by Mozambique, Zambia and Malawi while in east by the Indian Ocean and in the west by Burundi, Rwanda and Congo.⁸ The official languages of the nation are *Kiswahili* and English. In addition, many residents also speak Arabic. Essentially, the natives of what is now known as the United Republic of Tanzania are the peoples of Tanganyika and the indigenous people of Zanzibar. The apex court of United Republic of Tanzania is the Court of Appeal with jurisdiction to hear appeals from not only Tanganyika but also from Zanzibar.

Islamic Legal History of Zanzibar

The Zanzibar archipelago is part and parcel of United Republic of Tanzania though with slightly different legal system. Zanzibar, an Indian Ocean archipelago located off the eastern coastline of Tanzania contains three large islands and a number of smaller ones. In 1964 Zanzibar together with Pemba Island and some smaller Island joined with Tanganyika on the mainland to form the United Republic of Tanzania.⁹ Moreover, in 1969 with the enactment of the People's Court Decree a separate court structure came into existence in Zanzibar. This arrangement made provision for the People's Area Courts, the People District Courts, the Kadhis's Courts, the High Courts and the Supreme Council. There were also legislative reforms on legal regime of Zanzibar in 1984 and 1985 which assisted to improve the legal system of the region by the termination of the People's Courts system and the introduction of Common law in the judicial system. And of recent another reform of the Kadhis' Court system. To this end, three types of courts system emerged in Zanzibar and include: the High Court of Zanzibar, the Kadhis' Courts and the Magistrates Courts. The apex court in Zanzibar is the High Court of Zanzibar with unlimited jurisdiction

⁵ Khadduri, Majid (Trans) *Al-Shafii's Risala, Treatise on the Foundation of Islamic Jurisprudence*. Cambridge. The Islamic Texts Society, 1987.

⁶ Baloch, Abdul Ghafoor., et al. Imam Maliki-His Dedication in Compilation of Hadith Book Motta an Outlook from Historical Review. *British Journal of Humanities and Social Sciences*. Vol. 6(1), 2012, pp.45-50.

⁷ Norrie, K. M. Administration of Justice in Tanzania and Zanzibar: A Comparison of Two Judicial Systems in One Country. *International & Comparative Law Quarterly*, 38, 1989, p.395-397.

⁸ www.infoplease.com/country/tanzania.htm?pageno=2

⁹ Allot, A. Development of the East African Legal System during the Colonial Period in History of East Africa. D.A Low and A. Smith. Eds. Oxford, Clarendon, 1976.

over civil and criminal matters. The Court of Appeal of Tanzania has jurisdictions in Appeals from the High Court of Zanzibar. On the other hand, district court has original and appellate jurisdiction with slightly greater powers on civil and criminal matters if compared with the former. The resident magistrate courts have original and appellate jurisdiction and also with jurisdiction in cases from the lower Magistrate courts.¹⁰

One of the greatest reforms in the legal history of Zanzibar was the constitutional recognition for the existence of the Kadhis' Courts. This singular Act made provision for every district in Zanzibar to have Kadhis' Court and the constitutional provision of the position of the Chief Kadhis' Court' for Zanzibar. The 1985 Act amended the Islamic law position to this end, credibility of all evidence before the Kadhis' Courts in Zanzibar is not necessarily upon the number of witnesses who have given evidence. This is a landmark reform of Islamic jurisprudence for other nations with dual legal system to emulate in other make the Kadhis' Courts meet the needs of the Muslims in contemporary era. The Chief Kadhis' Court has no original jurisdiction, but the Appeals from the Chief Kadhis' Court lies to the High Court of Zanzibar. In the High court the judge sits along with four *sheikhs* learned in Islamic jurisprudence. Cases at the High court are decided according to a majority vote and the decision of the court is final.¹¹In United Republic of Tanzania though there is the statutory provision for marriage in the Law of Marriage Act, but the family law is not considered a Union matter therefore the Law of Marriage Act is applicable only in the mainland Tanganyika and is not in use in Zanzibar.

Historical background of Justice System in Nigeria.

Nigeria became independent from Britain in 1960 the nation had undergone tremendous reforms of its legal system. With the departure of the British in 1960, Nigeria had a democratically elected government on the British model, the parliamentary system of government. Nigeria is a multi - religious society, and its legal history is influenced by Islamic and Western jurisprudence.¹²

There are over two hundred and fifty different ethnic groups in the country, but English is the official language of the nation. According to the 1999 Constitution of Republic of Nigeria the country is made of thirty-six States. Kwara State is one of the thirty-six States.

¹⁰Norrie, K. M. Administration of Justice in Tanzania and Zanzibar: A Comparison of Two Judicial System in One Country, op.cit, 404-406.

¹¹Stiles, E.E., A Kadhi and His Court: Marriage, Divorce and Zanzibar's Islamic Legal Tradition. Unpublished Ph.D. Dissertation, Washington, Washington University, August, 2002, p. 288- 90.

¹² Reads J.S. Indirect Rule and the Search for Justice. Oxford, Oxford University Press, 1992, pp, 20-35.

Islamic Legal History of Kwara State, Nigeria

The area known as Kwara State was formerly under the Hausa States territorial control that existed in eighteenth century and was one of the emirates of the Sokoto Caliphate in the nineteenth century.¹³ Kwara State is located in the north western region of the country. The judicial arm of government, headed by the Chief Justice. The Sharia Court of Appeal exists in the State in line with the constitutional provisions. Courts that have jurisdiction in Islamic matters particularly in terms of hierarchy are Area Courts, Sharia Court of Appeal, High Court, Court of Appeal and the Supreme Court.¹⁴

The Structure of Zanzibar Legal System.

The apex Court of the United Republic of Tanzania legal structure is the Court of Appeal of Tanzania. Formerly, the Court of Appeal for East Africa and its services were enjoyed by members of East Africa Community.¹⁵ Other Courts include: High Court; Magistrate Courts and Kadhis' Courts.

Court of Appeal of Tanzania

The Court of Appeal Tanzania handles all matters from the High Court of Zanzibar except matters on Muslim family cases because family law is not considered as a Union matter.¹⁶ The President of the United Republic of Tanzania appoints the Chief Justice of the Court of Appeal and other Court of Appeal Judges though also appointed by the President on the recommendations of the Chief Justice.¹⁷ The Court of Appeal of Tanzania is one the unifying factor between Tanzania Mainland and Zanzibar because the United Republic of Tanzania share this court system.

High Court of Zanzibar

The Constitution of the United Republic of Tanzania recognizes the right of Zanzibar to have its own High Court. The Judiciary of Zanzibar main role is the interpretation of laws, adjudication of cases and administration and dispensation of justice in accordance to the country's laws.¹⁸ The emergence of the Zanzibar Court system can be traced to 1964, immediately after the 1964 revolution. With the revolution a single uniform court structure was established for all the subjects. The court's nomenclature now became the High Court of Zanzibar. In addition, the 1964 revolution also

¹³ Boahen, A. Topics in West African History. London, Longmans, 1966, pp, 70-75.

¹⁴ Oba, A. A. Towards Rethinking Legal Education in Nigeria. *Journal of Commonwealth Law and Legal Education*, 2000, pp.15-17.

¹⁵ Established by Article 80 of the Treaty of East African Cooperation 1967.

¹⁶ Habermas, J. Multiculturalism and the Liberal State *47 Stan Law Review*, 1995, pp 849-51.

¹⁷ Article 118 (3) of the Constitution of United Republic of Tanzania.

¹⁸ The Judiciary of Zanzibar. www.judiciaryzanzibar.go.tz

abolished Subordinate Courts structure and the People Court of Zanzibar came into existence. In 1985 it was abolished and replaced with the present subordinate Courts and Magistrate Courts system came into being in Zanzibar.¹⁹ According to the Zanzibar constitution the top most court in the hierarchy is the High Court of Zanzibar. The Judiciary system of Zanzibar comprises of High Court and Subordinate Courts and it includes the Kadhis' Courts. This comprise of district Kadhis' Courts and are court of first instance and the Appellate Kadhis' Court which is appeal court.²⁰ The High Court of Zanzibar is a superior court of record to hear and determine any civil and criminal matters. The High Court hears appeals from the subordinate courts and has supervisory powers over all subordinate courts. During civil or criminal trials as well as in appeal cases the High Court may call not more than four assessors to give assistance to the judge as the may be. The opinions of the assessors are of no binding effects on the judge. This provision does not apply to Muslim personal matters originating from the Kadhis' Courts.²¹ The decision of the judge must be documented on courts' records. The language of the High Court of Zanzibar is *Kiswahili* or English. The Chief Judge may use his discretion on the language of the court. In Zanzibar Judges of the High Court are appointed by the President of the Revolutionary Government of Zanzibar in consultation with the Judicial Service Commission of Zanzibar.²²

Magistrate Courts

The jurisdiction in Muslim Legal matters and the administration of justice under the present dispensation is based on 1985 legislation. To this end, the Magistrate courts are classified into three namely; the Primary Courts, District Courts, and Regional Courts.

Primary Courts

A Primary Court is available in every district of Zanzibar. There is the constitutional provision for establishment of more than one court in each district of Zanzibar. The Judicial Service Commission appoints Magistrates for the Primary Courts. Magistrates presides over Primary Courts in Zanzibar.²³ The jurisdiction of the Primary Courts are on civil, criminal matters and on matters relating to money and financial issues. On the service of the lawyers in the courts, advocates or State Attorney are prohibited from appearing before the Magistrates. In Zanzibar litigants

¹⁹ Magistrate Court Act, 1985.

²⁰ Article 93(1) of the Constitution of Zanzibar, 1984 and Kadhis Court Act, 1985.

²¹ Rutinwa, B. Constitution and Legal System of East Africa: The Court System and Conflict of Law in Tanzania. Dar es Salaam. The Open University of Tanzania, 1996, pp, 93-94.

²² Section 94 (2) of the Zanzibar Constitution, 1984

²³ Sections 3(1) - Section 5(1) and Section 8(1) Magistrate Court Act, 1985.

may be represented by *Wakyts*, and in matters before the Primary Courts.²⁴ The language of the court, in Primary Courts *Kiswahili* language.

District Courts

The District Court is established under the Magistrate Act. This court exercises appellate and revisionary powers over the Primary Courts below it. District Court is established in every District of Zanzibar. This provision of the law is yet to be fulfilled in Pemba and Unguja Districts of Zanzibar up till recent times. The District Magistrate is appointed by the Judicial Service Commission. On the service of the lawyer under the district court in Zanzibar, advocates have right of audience before the district courts of Zanzibar. District Courts in Zanzibar have both original and appellate jurisdiction in criminal and civil cases. The language of the District Court of Zanzibar is either Kiswahili or English as the Chief Judge may direct.

Regional Courts

The Magistrate Act makes provision for the establishment of a regional court in each region of Zanzibar. Resident Magistrates preside over regional courts. A Regional Magistrate is appointed by the Chief Judge. This judicial position is for holders of degree in law and not less than three years' experience. Regional Courts have criminal, civil, and pecuniary jurisdictions. And it performs supervisory functions over both district and primary courts.²⁵ The Chief Judge appoints resident magistrate for each region of Zanzibar. The Regional Court of Zanzibar is the same as the Resident Magistrates' Courts in Tanzania Mainland.

Kadhis' Court System in Zanzibar

One of the oldest court system in Zanzibar is the Kadhis Court system. Literarily, Kadhi is an Arabic word which means a judge in a Muslim environment whose decisions are based on Islamic jurisprudence.²⁶ From the classic era Kadhis traditionally had jurisdiction on Muslims legal matters applying Islamic law. Kadhis Courts had long historical antecedent from the time of the advent of the Arabs along the east coast of Africa.

Kadhis' Courts

Kadhis courts in Zanzibar are established by the Constitution of Zanzibar, the High Court Act. The courts are parallel to the Magistrates' courts under the current judicial

²⁴ In Zanzibar Wakyts are not defined in the statute, but these are considered to be paralegal officilas who hold certificate or diploma in Law.

²⁵ Section 7- Section 32 of the Magistrate Act of 1985.

²⁶ Majamba, H.I. Possibility and Rationale of Establishing Kadhis Courts in Tanzania Mainland. *Paper presented at the 20th REDET RMC Workshop*. Held in Council Chamber, University of Dar Es Salaam on 10th November, 2007.

structure of Zanzibar.²⁷ According to the constitutional provisions, there are two Kadhis' Courts in Zanzibar. These are the Kadhis' Courts and the Chief Kadhi court of Zanzibar. In addition, in accordance to constitution guideline the House of Representatives of Zanzibar is empowered to enact law for the establishment of other courts than the High Court of Zanzibar and the Court of Appeal.²⁸ Accordingly, pursuant to constitutional provisions the House of Representatives enacted the High Court Act and the Kadhis' Court Act in 1985. Hence, the establishment of Kadhis' Courts in each of ten Districts of Zanzibar, and each has jurisdiction within the District in which it is established. The Act makes provision for the qualifications for the position of Kadhis in Zanzibar. First such candidate needs to profess and practice Islam with good understanding of Islamic jurisprudence. Though Kadhis' Court are made up of Kadhis and are appointed by the Judicial Service Commission in consultation with the Chief Kadhis.²⁹ In Zanzibar Kadhis are judicial officers for their appointment and promotion are based on the recommendations of Judicial Service Commission in accordance to civil service rules and regulations and belongs to the judicial arm of the government. In Zanzibar Kadhis' Courts are endowed with independent budget allocation according to the provision of the statute.

Chief Kadhis' Court

In Zanzibar, the Chief Kadhis' Courts are established by the Constitution of Zanzibar. At the apex of Kadhis' Court structure is the Chief Kadhi. Qualifications required is the same with that of other Kadhis except requisite experience is required of the office of Chief Kadhi. The Chief Kadhi is appointed by the president of Zanzibar. In Zanzibar, two offices of Chief Kadhis Courts are in existence, one established in Unguja the second one is located at Pemba. On the composition of the court, the Chief Kadhis Court is made of one senior Kadhi who assists the Chief Kadhi in adjudication process.³⁰

Language of the Kadhis' Courts

Kadhis Courts' proceedings are not open to the public. The language of the court is *Kiswahili*. Parties involved in matters before the Kadhis' Courts make their address in *Kiswahili*. In some cases judgments of the courts are written in Arabic scripts. Kadhis' Courts are not courts of record. The jurisdictions of Kadhis' Courts are on Muslims' personal matters namely; marriage, divorce inheritance and other related matters. But the constitution is clear that all the parties involved in proceedings must profess Islam and the court may exercise territorial or subject matter jurisdiction

²⁷ Kadhis Court Act Nos 2- 3 of 1985.

²⁸ Article 100 of the Constitution of Zanzibar, 1984.

²⁹ Section 3 and Section 5(1) of Kadhis Court Act of 1985.

³⁰ Omari, I. legal System in Tanzania Law and Courts. Mbeya, Penuel Printing, 2018, pp. 100-115.

within its area of jurisdiction. From the composition and qualifications of Kadhis' Courts officials, these courts are religious courts. The jurisdiction of Kadhis' Courts are limited to Muslims personal matters in Zanzibar. The court system have jurisdiction on matters of strictly Islamic civil nature provided all the parties involved are Muslims. Indeed, consent of the parties are vital in jurisdictional scope to this court type. In Zanzibar, there are Constitutional safeguards which guarantee the protection the citizens' right to freedom of religion and right not to be discriminated against in whatever form and right to access the courts.³¹ Kadhis' Courts in Zanzibar do adhere to doctrine of precedent. These courts are bounded only by doctrines of Islamic jurisprudence. These courts make use of the Quran and the tradition of the Prophet Mohammad. In Zanzibar Kadhis' Courts abide by the doctrine of *Shafii* jurisprudence.³²

Jurisdiction of the Chief Kadhis Courts

The Chief Kadhis' Courts supervise the lower Kadhis' Courts and these courts have appellate jurisdiction on other Kadhis' Courts in Zanzibar. These courts hear and determine appeals for the matters that originated from the Kadhis' Courts. The Chief Kadhis' Courts in Zanzibar do not have original jurisdiction, but only act as an appellate court for decisions from Kadhis' Courts. In order for the Chief Kadhis' Court to perform its appellate jurisdiction the composition is made of the Chief Kadhi and one senior Kadhi in one appeal. On the other hand, the Chief Justice of Zanzibar has discretionary power on composition of the court. Appeal on the decisions of Chief Kadhis' Courts lie to the High Court of Zanzibar. In cases of difference of opinions on Muslim personal matters there is the statutory provision for the office of *Mufti* who advised on jurisprudential matters of Islamic law.³³ For the High Court to exercise their appellate jurisdiction for appeals from the Chief Kadhis Court. The High Court is presided by a single judge in the presence of four *Sheikhs* who are learned in Islamic law. These experts are essential for proper composition on matters of appeal on Muslims' matters and are regarded as members. However, the High Court may require external experts to assist to interpret ambiguous matters in Islamic jurisprudence.³⁴ As in the Zanzibar case of *Masoud Ali Kombo and others versus Khalid Ali Kombo and others*. In the said case the Attorney General of Zanzibar functioned as *amicus curiae* for the purpose of application of Islamic law.³⁵ On issues of Muslims' personal matters the High Court's decision on such appeal is based on

³¹ Article 12 and 19 of the 1984 Constitution of Zanzibar.

³² Omari, I. *Legal System in Tanzania Law and Courts*. Mbeya, Penuel Printing, 2018, pp100-115.

³³ Section 4(4) and Section 10 of the Kadhis Courts Act of 1985 and Mufti Act No. 9 of 2001.

³⁴ Omari, Issa. *Legal System of Tanzania Laws and Courts*, Mbeya, Penuel Printing, 2014, p.213.

³⁵ Civil Appeal No 16 of 1987, High Court of Zanzibar, (Unreported)

the majority opinion of the members.³⁶ The decision of the High Court of Zanzibar is final on matters of Islamic Law and cannot be subject of appeal to the Court of Appeal of Tanzania.

Applicable Laws by the Kadhis' Courts.

Although Kadhis' Courts adhere to Islamic law in the determination of matters before the court, yet the constitution provides for applicable law in the Kadhis' Courts. All Kadhis' Courts including the Chief Kadhis' Courts are not discriminate on grounds of religion, sex or otherwise. In addition, Kadhis' Courts are to decide matters upon an assessment of credibility of all evidence before the court and not upon the number of witnesses who have given evidence.³⁷

Procedural Aspects of Kadhis' Courts

The Constitution of Zanzibar makes reforms on the procedural aspects of Kadhis' Courts which differ from that of Islamic law practice. The law applicable in the Kadhis' Courts is not codified. There is an express provision in the general law would negate Islamic law to the extent of such inconsistency.³⁸ Moreover, Kadhis have discretional power to interpret Islamic law and pronounce judgments on matters brought before the courts. According to scholars for over two decades now the Kadhis' Courts have being existence without rules of procedure and practice as required by the law that established the court system. Despite the fact that the Chief Justice of Zanzibar is empowered to make rules and provides for the procedure and practice to be applied in the Kadhis' Courts. The Chief Justice of Zanzibar is yet to exercise this discretional power thereby creates lacuna of issue of practice procedure. To bridge this gap the Kadhis' Courts make use of Civil Procedure Decree. This development demonstrates the impact of Common law influence on adjudication process on Muslims' matters in Zanzibar. However, proceedings before any Kadhis' Court cannot be challenged the ground that the law and rules of evidence applicable in the High Court are applied except that such an application resulted in miscarriage of justice.

Recruitment, Appointment and Promotion

The recruitment, appointment and promotion of Kadhis are guided by civil service rules and regulations. Therefore, Kadhis' Courts officials are civil servants and are on the pay roll of the executive arm of Government of Zanzibar. The Chief Kadhis is

³⁶ Rutinwa Bonaventura., *Constitution and Legal System of East Africa: The Court System and Conflict of Laws in Tanzania*. Dar es Salaam. The Open University of Tanzania, Faculty of Law, 1996, pp. 7-12.

³⁷ Section 10(3) and Section 7 of the Kadhis Courts Act of 1985.

³⁸ *Masoud Ali et al vs. Khalid Ali Kombo*. High Court of Zanzibar Civil Appeal No 16 of 1987.

appointed by the President and has to be well versed in Islamic law. Such appointments are made on the recommendations of the Judicial Service Commission.

On the qualifications for the position of Kadhi, only a Muslim can be appointed. Since the requirements include mainly; that the person follow Muslim religion and must possess knowledge of Islamic jurisprudence applicable to any sect or sects of Muslims. Non- Muslims are not taken into consideration for the position of Kadhis in Zanzibar.³⁹

The Structure of Courts in Nigeria

Nigeria is made up of the Federal Court system namely; the Supreme Court, the Court of Appeal, and the Federal High Court. In addition, the Courts in the Federal Capital Territory are also Federal Courts because the Federal Capital Territory is considered to be Federal Territory. However, in their operations the Courts of Federal Capital Territory have the same jurisdiction and characteristics with the State Courts. The Constitution of Nigeria makes provisions for Federal Courts and State Courts. Nigeria Federal law is based on English Common law.⁴⁰

The Supreme Court System

The Supreme Court has exclusive appellate jurisdiction over all appeals from the Court of Appeal. The Court does not and cannot have original criminal jurisdiction. The Supreme Court has original jurisdiction to the exclusion of any other court in certain disputes, but does not have original jurisdiction on any on criminal matter, and it has jurisdiction to the exclusion of any other court in Nigeria to hear and determine any appeal from the Court of Appeal. At the Supreme Court there is no requirements as the number of its Justices to sit over Islamic civil causes.⁴¹

Court of Appeal.

The Constitution makes provision for the establishment of the Court. At the head of the Court is the President of Court of Appeal. In addition, subject to the provision of the Constitution the Court of Appeal has appellate jurisdiction to the exclusion of any other court of law in Nigeria. The Court of Appeal is divided into different judicial divisions and sits in certain states in Nigeria. The Court of Appeal consists of not less than forty-nine judges at all times. The Court of Appeal is constituted by three of its Justices learned in Islamic personal law when sitting over an appeal from the Sharia Court of Appeal. However, there is no such requirement for appeals from the High

³⁹ Section 9 (1); Section 4(1); and Section 5(3) of the Kadhis Act of 1985.

⁴⁰Odinkalu, A. C. Justice Denied: The Area Courts System in Northern Nigeria, Ibadan Kraft Books Limited, 1992 pp. 23-25.

⁴¹ Abikan, A. I. The Application of Islamic Law in Civil Causes in Nigerian Courts. Journal of International and Comparative Law. 6, J I C L, June, 2002, pp. 88-115.

Court bordering on other aspect of Islamic law than Islamic personal law which form bulk of Islamic civil causes at the Sharia Court of Appeal.⁴²

The Federal High Court

The Court is headed by a Chief Judge, for the number of Judges for the Federal High Court this is based on an Act of the National Assembly. The Federal High Court sits in Judicial Divisions and the jurisdiction of the Federal High Court is defined by the Constitution and the Federal High Court Act. The Federal High Court, unlike other Federal Courts has no appellate jurisdiction. But in the exercise of its jurisdiction, the Federal High Court has powers of a State High Court.⁴³

The State Courts

The State under the authority of the Constitution have a discretion with respect to the creation of their own Court. Other than the High Court which is mandatorily required by the Constitution, the States do not have a duty to create any other Courts. One the outstanding features of the State High Court is that while the judges below the rank of the High Court judge are remunerated under the State civil service structure, salaries of the judges of the State High Courts and the Kadhis of the Sharia Court of Appeal and the Customary Courts are charged against the Consolidated Revenue Fund of the State.⁴⁴

The High Court of Kwara State

There is only one High Court in each State. Like the Federal High Court, the State High Courts sit in Judicial Divisions of contiguous Local Government Areas. The High Court of Justice of Kwara State has unlimited civil and criminal jurisdiction over all matters unless its jurisdiction is validly and statutorily ousted. Above all, the Kwara State High Court hears all cases, Islamic civil causes inclusive, except as may be excluded by the Constitution. Though the power of appeal in cases involving questions of Muslim personal law is vested in the Shariah Court of Appeal and High Court in all other cases, yet, there is nothing in the constitution to suggest a division of jurisdiction. The High Court of Kwara State is empowered to apply principles of Islamic law handling it as a variance of native law and custom. The High Court in its exercise of the power would not have ignite any issue but for the re-appearance of the tripartite test in its application and competence of the High Court Judge to apply the law.⁴⁵

⁴² Odinkalu, A.C. Justice Denied: The Area Courts System in Northern Nigeria, op.cit, pp, 23-25.

⁴³ Abikan A.I. The Application of Islamic Law in Civil Causes in Nigerian Courts, op. cit, pp. 88-115.

⁴⁴ Abikan, A. I. The Application of Islamic Law in Civil Causes in Nigerian Courts, op. cit, pp. 88-115.

⁴⁵ Section 120; Section 253; Section 272; Section 275; Section 280 and of the 1999 Constitution of Federal Republic of Nigeria.

Kwara State Sharia Court of Appeal.

The Constitution of Nigeria first recognized or established the Sharia Court of Appeal under the 1979 Constitution. Though this does not mean that Islamic law does not exist under the Nigerian Constitutions before 1979. The former Constitutions makes provision for the right to religious freedom and by extension means recognition of Islamic law. In fact, there was an attempt to establish a Court of Appeal which will stand next to the Supreme Court in hierarchy to handle cases from Sharia Court of Appeal.⁴⁶ Islamic law is part of the sources of Nigerian law and the Constitution recognizes Islamic law of the *Maliki* School of jurisprudence in respect of Islamic personal law and it established the Sharia Court of Appeal. This provision categorically states that there shall be a Sharia Court of Appeal for every state that requires it.⁴⁷

Magistrate Courts

The Magistrate and Districts Courts are parallel to the Area Courts, within the hierarchy of the State Courts in Kwara State. Both are subordinate to the High Courts in the hierarchal structure. Area Courts are not subordinate to the Magistrate Courts. The Magistrate Courts deal with criminal cases, the District Courts handle civil matters where the Common Law is applicable.⁴⁸

Area Courts System in Kwara State.

The Constitution contains a saving provision preserving the legality of pre-existing laws to such extent that makes them consistent with the Constitution and the laws made under it. This provision saves the Area Courts that they created.⁴⁹ The Law for Area Courts system permits a system that would simultaneously administer Islamic Law and Ethnic Customary Law. The Area Courts are created by law, and the law also defines the limits of their powers and functions. The common law and some of its technicalities are unknown and foreign in Area Court system. In Area courts the Evidence Act is not applicable to judicial proceedings unless the Governor of the State shall by order confer upon it any of the provisions but it be guided by that Act.⁵⁰ Area Court is constituted under a warrant issued by the State Chief Judge who may vary or cancel the warrant based on his discretion. Area courts are courts of first instance with jurisdiction in civil cases relating to customary law and Islamic law. In addition, they also have criminal jurisdiction and administer the Penal Code and are

⁴⁶ Article 240 and 241 of the 1979 Constitution of Federal Republic of Nigeria.

⁴⁷ Oba, A.A. Kadhis of the Sharia Court of Appeal: The Problem of Identity Relevance and Marginalization within the Nigerian Legal System. *Journal of Commonwealth Law and Legal Education*, 2004.

⁴⁸ Obilade, A.O. Nigerian Legal System. Ibadan, Spectrum Law Publishing Company, 1998, pp, 202-206.

⁴⁹ Section 315 (1) of the 1999 Constitution of Federal Republic of Nigeria.

⁵⁰ Volume V111, Laws of the Federation of Nigeria 1990.

guided for this purpose by the Criminal Procedure Code. The Penal Code is ultimately the impact of English law of crimes on effective adjudication of this courts on criminal matters.⁵¹ All Islamic and customary law crimes have been abolished by the Constitution.⁵² The fusion of administration of customary law and Islamic law in one set of courts was based of colonial heritage of definition of native law and custom as including Moslem Law.⁵³ Appeals from the Area Courts go to the Sharia Court of Appeal in matters of Islamic personal Law, that is, matters of marriage, inheritance, custody of children and *wakf*. However, in all other Islamic matters, appeals go from the Area Courts to the High Court. More importantly, from both the Sharia Court of Appeal and the High Court, there are further appeals to the Court of Appeal from where appeal finally terminates at the Supreme Court.⁵⁴ Scholars argue they are creations of the statute and not religion.⁵⁵ The Supreme Court of Nigeria in *Alkamawa v. Bello* pronounced that Islamic law is not the same as customary law, that it is a complete system of universal law and more universal than the English common law. An Area Court may be constituted by single judges or by more than one. In practice all Area Courts other than the Upper Area Courts are constituted by one judge. The Area Courts Quorum Direction regulates the Constitution of the court for sitting in open court. This notwithstanding, does not in any way distract the significance of the courts in adjudication process of Kwara State. The Upper Area Court is the highest in hierarchy of Area Courts in Kwara State.⁵⁶

Jurisdiction of Area Courts.

Jurisdiction is important for the exercise of judicial functions. A Court must have jurisdiction before it acts on any matter. Courts derive their jurisdiction from the either from the Statutes that creates them or direct from the Constitution. Furthermore, if without jurisdiction, a court or other judicial tribunal purports to act on any matter, the action or decision of the court will be liable to be set aside as illegal by a higher Court. Jurisdiction is the pillar upon which the entire case stands. Once a party, usually the defendant, shows that the court has no jurisdiction, the foundation of the case crumbles; then parties cannot be heard on merit and that puts an end to the litigation. The issue of jurisdiction, whether limited or otherwise is not new to Islamic Law. It has long been accepted as a valid functional aspect of Islamic

⁵¹ Karibi-Whyte' A.G., History and Sources of Nigerian Criminal Law. Ibadan, Spectrum Books. 1993, p. 232.

⁵² Section 36(12) Constitution of Federal Republic of Nigeria.

⁵³ Section 2 High Court Law, Cap H2, Laws of Kwara State, 2007

⁵⁴ Obilade, A.O., Nigerian Legal System. Ibadan, op.cit. pp. 170-192.

⁵⁵ Odinkalu, A.C., Justice Denied (The Area Courts System in the Northern States of Nigeria). Ibadan, Kraft Books Limited, 1992, p.29. Oba, A.A., Neither fish nor fowl: Area Courts in the Ilorin Emirate in Northern Nigeria. Journal of Legal Pluralism. Vol.58, 2008. <http://commission-on-legalpluralism.com/volumes/58/oba-art.pdf>

⁵⁶ Odinkalu, A. C. Justice Denied: The Area Courts System in the Northern States of Nigeria, op .cit, pp. 30-35.

jurisprudence and is therefore crucial, basic and fundamental to the adjudicatory process under Islamic law.⁵⁷ Thus, Islamic law provides for jurisdiction over territory, period, parties and subject-matter. Area Courts are courts of limited jurisdiction, the law restricts the jurisdiction in two respects. The law set ceiling of geographical location and persons. Not every person is subject to the jurisdiction of the Area Courts. Firstly, an Area Court is a State Court, it cannot adjudicate on a case that originates from facts or event outside the State that creates it. Secondly, Area Courts does not have jurisdiction in cases involving a person not of African descent unless that person consents. Similarly, the Statutes delimit the scope of matters that the Area Courts may inquire into or adjudicate upon. Area Courts have civil and criminal jurisdiction, but the scope of this jurisdiction varies according to the classification of the court, whether it is an Upper Area Court or an Area Court.⁵⁸

On jurisdiction in civil claims, Area Courts Law delimits the scope since Area Courts are restricted to adjudicate upon matrimonial matters involving spouses married under the Customary Law and custody of the children of such marriage. Area Courts also have jurisdiction to handle cases involving debts, demand or damages that do not exceed the financial ceiling placed by the Law on the different grades of Courts. Area Courts system are empowered deal with cases involving succession and inheritance of property under Customary Law.⁵⁹

Non-compliance to provision of this scope amounts to illegality and such decision will be invalid. The Upper Area Courts in Kwara State like other States in Northern Nigeria have unlimited jurisdiction in terms of monetary value of subject of litigation. The Chief Judge of the State in the warrant creating the Area Courts or subsequently by and order may vary the limits placed on the jurisdiction of Area Courts.⁶⁰

Upper Area Courts Jurisdiction.

The Upper Area Courts have unlimited jurisdiction of all cases falling within the categories that the Area Courts as recommended by the law. In fact, with the Upper Area Courts there are no monetary limits on cases they can handle. The Upper Area Courts in Kwara State like other State in Northern Nigeria have unlimited jurisdiction in terms of monetary value of subject of litigation. The Area Courts Laws of Kwara State makes provision for appeals within and from the Courts' system. The Law stipulates that so long as the aggrieved party can show to have a commonality of

⁵⁷ Oba, A.A. Neither Fish nor Fowl: Area Courts in the Ilorin Emirate in the Northern Nigeria, op.cit.

⁵⁸ Odinkalu, A. C. Justice Denied: The Area Courts System in the Northern State of Nigeria, op. cit, pp. 30-35.

⁵⁹ Section 15; Section 18; and Section 20 of the Area Courts Laws. Cap A9, Laws of Kwara State, 2002.

⁶⁰ Oba, A.A. Neither A Fish nora Fowl: Area Courts in the Ilorin Emirate of the Northern Nigeria, op. cit.

interest and grievance and a legitimate interest in the pursuit of the appeal.⁶¹ In cases involving Muslim Personal Law,⁶² Appeals lie from the decision of the lower Area Courts to the Upper Area Courts, then to the Sharia Court of Appeal. The Grand Kadhis heads the Kwara State Sharia Courts of appeal.⁶³ From the arrangement of courts system in the States in Kwara State, only Upper Area Courts have appellate jurisdiction. Such jurisdiction gives the Upper Area Courts the following powers; order the quashing of the decisions of the trial Area Court, vary such decisions or substitute it with a fresh decision within the limits of the jurisdiction of the trial Court.⁶⁴

Language of the Area Courts

In order to keep records of events that transpires in the Court, keeping good Court records becomes inevitable in Area Courts. One peculiar characteristics of the Area Courts, unlike other Courts is the records of the Courts are kept in vernacular. The Court summons and other notices are made out in vernacular. However, for purposes of appeal or any other reasons such records are translated into English by the Court Registrar. For applicant to obtain these records a prescribed fee is paid to the Court. One the prerequisite duty of the registrar is to keep and manage the records of the Court.⁶⁵ The judge of the Area Court endeavors to control or verify the records kept by the registrar. Proper record keeping is one the grey areas of the court system.

Applicable Laws of Area Courts

In Kwara State Area Courts have Criminal and Civil jurisdiction. However, the Law provides for Area Courts to administer native law and custom in civil causes and matters. Furthermore, what is prevailing native law and custom is usually a question of fact to be proved by evidence. In addition, unless the fact has by frequent proof in the court becomes so notorious that the court has taken judicial notice of it. The Area Courts Laws provide that for adjudication the court has two alternatives, either to try the case by administering the native law and custom prevailing in the area of jurisdiction of the court or it may try the case by applying the native law binding between the parties. It may not be correct to say that Area Courts can only administer the appropriate customary law in force in their respective area of jurisdiction.⁶⁶ In any event, the default of custom under appropriate statute, the Law obviates any need for any quibbling over distinction.

⁶¹ Section 18A; Section 53 of the Area Courts Laws. Cap A9, Laws of Kwara State, 2002.

⁶² Court of Appeal of Northern Nigeria (Cap. 122 Laws of Northern Nigeria), 1963.

⁶³ Section 247 (1) (a) and Section 288 of the 1999 Constitution of Federal Republic of Nigeria.

⁶⁴ Section 58 and Section 59 (1) - (2), of the Area Courts Law. Cap A9, Laws of Kwara State, 2002.

⁶⁵ Order 27 (1), and Order 27(2) (Civil Procedure) Rules. A9, Area Courts Laws, Subsidiary Legislation, 2007.

⁶⁶ Section 18; Section 18A; Section 20 (1) (a) - (c) of the Area Courts Laws. Cap A9, Laws of Kwara State, 2002.

Also, for the custom to have this force, it must pass the tests prescribed under the statute. Scholars point out that the repugnancy test seems to have been inspired by the felt need of the colonial administration then, no more than now, eradicate customs that were considered barbarous, unjust or unfair.

Procedural Aspects of Area Courts

The law of procedure assists to safeguard the protection of rights. Accordingly, under principle of law it is explained that individuals shall be tried by ordinary Courts or tribunals using established legal procedures. Moreover, tribunals do use the duly known legal procedures of the legal process shall not be created to show case the jurisdiction belonging to the ordinary Courts or judicial tribunals.⁶⁷ The law of procedure is generally known as Adjectival Law. This is made of the law of evidence and the law of procedure. In Nigeria, evidence is on the Exclusive Legislative List of the Constitution. Whereas, the Federal legislation that regulates evidence in judicial proceedings in Nigeria is the Evidence Act.⁶⁸ The Civil Procedure entails procedure in civil cases where the claim usually relates to the assertion or denial of rights not resulting in the conviction and the sentencing of any person or persons. The rules of Civil Procedure in Nigeria varies from Court to Court and are regarded as legislation created under the enabling laws that establish the Courts. The Statute gives power to the Chief Judge of Kwara State to make rules prescribing and providing for the practice procedure of Area Courts in their original jurisdiction, on review and appeal.⁶⁹ In the exercise of that power, that in so far, they are not inconsistent with the enabling statute nor repugnant to the general law of the land but certain and not unreasonable. The technical procedural rule of the English law are not applicable under customary law and there is no necessity to observe the strict or technical rules of pleadings and practice as required in the High Court or Magistrate Court. They are not prisoners of cumbersome procedure and if their have rules of procedure, they are mainly to be guided by them percurian. On institution of causes the law provides for refusal of cause where no jurisdiction.⁷⁰ In Nigeria an action is commenced by an application for a summons to the Registrar of the appropriate court payment of prescribed fees. There are no provision for filing of pleadings in the Area Courts Rules, hence every civil cause is to be by a complaint made in person. The position of

⁶⁷ Odinkalu, A.C. Justice Denied: The Area Courts System in Northern Nigeria, op.cit.

⁶⁸ Cap. 112, Laws of the Federation 1992.

⁶⁹ Oba, A.A. Judicial Practice in Islamic Family Law and its Custom in Northern Nigeria. *Islamic Law and Society*. 2014, p. 10-14.

⁷⁰ Ojukwu, Ernest. Making the Uniform Procedure Rules Impracticable. *Justice*. Vol. 2, No 5, May 1991, pp.3-5.

law on service and execution out of the jurisdiction of an Area Court is clear according to the statute.⁷¹

Continuation of hearing in Muslim causes is in accordance with Muslim Practice and Procedure. On pleas to the jurisdiction of the court where the defendant wishes to plead that the court has no jurisdiction, that the claims does not disclose a cause of action; or that the subject matter of the claim has already been adjudicate upon such plea is to be made any time after such defendant is asked what he has to say in answer to the and his answer in this regard is to be entered in the Civil Cause Record Book. It is the interest of natural justice that is raised in court during hearing are taken down.⁷² On use of evidence and witnesses there are laid down rules. A court is not entitled to consider as evidence before it, the record of evidence given before another tribunal by a witness, who is, or could be made available to give oral testimony.⁷³

In civil proceedings a judge lacks the power to recall a witness without the consent of the parties. Except for the purpose of throwing light on the case, the judge may with the acquiescence of the parties. As regards the practice and Procedure on default appearance of witness that a person who without just exercise, disobeys a witness summons requiring him to attend before any court shall be guilty of contempt. All exhibits tendered in the course of civil proceedings are kept by the court or tribunal which hears the case for the statutory period and later to be sent to the appeal court with other records of appeal when there is an appeal. A judgment of an Area court, is valid and binding between parties until it is set aside.

Recruitment, Appointment and Promotion

Scholars argue that Area Courts system are handled by judges that are not educated if compared to other court system. In recent era, only literate persons are appointed as Area Court judges but there are issues on their qualifications. All staff of Area Courts are public officers in the public service of the State. The appointment of Area Court judges are made on the recommendation of the Inspector to the Chief Judge and approved by State Judicial Service Commission. There are provisions on qualification of Area Court Judge, a waiver of such requirement means such officer of the court shall act in that capacity. In addition, Area Court Judge sits with assessors, who only act as advisory to the judge on peculiar customary relating to the case at hand. The

⁷¹ Oba A. A. *Judicial Practice in Islamic Family Law and its Custom in Northern Nigeria*, op. cit, pp. 10-14.

⁷² Ambali, M.A. *Islamic Law Procedure: A Balance of Justice, Faith and Compassionate Magnanimity*. Kwara State Law Review. Vol. 1, No 1, 1992, pp, 15-16.

⁷³ Order 11, Part 11, 3(a)-(c) and Order 13 (1) of the (Civil Procedure) Rules of Area Courts of Kwara State. 2007.

promotion of Area Court Judges are done by the Judicial Service Commission in consultation with the Inspector of Area Courts.⁷⁴

Similarities and Differences of Kadhis' Courts

Kadhis' Courts in both Zanzibar and Kwara State of Nigeria have quite a number of similarities and differences. In the regions the Kadhis' Courts were able to survive the European colonialism and the policy of the indirect rule. Though the colonial encountered reduced the jurisdiction of the courts system on the long run. In Zanzibar and Kwara state of Nigeria the Kadhis' Courts are creation of the statutes. The Courts are part and parcel of the hierarchal structure of the legal systems of the different regions. Similarly, the courts had undergone changes since the post-colonial era and survived different political regimes. The institutional frameworks of the courts are also similar; the Judicial Service Commission assists in the appointment, promotion and the discipline of the courts officials of the Kadhis' Courts. In both regions Kadhis' Courts officials are civil servants of the state. The research findings indicated that there are no provisions for job mobility from the magistracy bench to the Kadhis' bench and vice versa in Zanzibar and Kwara State of Nigeria.

Also, there are no career prospects from the lower bench to the Superior Courts that is High Courts, Court of Appeal or any other Superior Courts as the case maybe. The paper observes that it is only in exceptional cases that the members to the lower bench moves to Superior Courts as it is the case with the sitting Grand Kadi of Kwara State Sharia Court of Appeal, Ilorin, Kwara State. Other areas of similarities include the use of vernacular in the courts' proceedings and lack of formal dress code either for the Kadhi or the Advocates appearing before the courts' system. Mode of appointment to the Kadhi bench is also similar since the minimum qualification required for such position is a diploma in Law. However, the mode of training of Kadhi courts' judges are similar, usually in service training are organized for them from time to time. This paper posits that this trend is gradually changing in both regions with the recruitment of graduates in Sharia and Common Law to the Kadhis' bench. The areas of jurisdiction of the courts are almost the same with limitations on subject matter, person and geographical scope. Another peculiarity of Kadhis Courts in Zanzibar and Kwara State is that the decisions of a court is not of binding precedent to other Kadhis Courts.

Although, the Courts' system lacked effective Law reporting since only matters that reached the High Courts as in the case of Zanzibar or Kwara Sharia Court of Appeal are in most cases reported. It has been found that the Kadhis' bench is faith oriented, hence the non-Muslims are not appointed as Kadhis in Zanzibar and Kwara State of

⁷⁴Oba, A. A. *Judicial Practice in Islamic Family Law and its Custom in Northern Nigeria*, op. cit, pp. 10-14.

Nigeria. This position negates the fundamental human rights of other members of the society that are not Muslims. The paper observes that the knowledge of Arabic language gives additional advantage to a prospective candidate for the position of Kadhis in the two regions. This is contrary to the mutli-lingual profile of the two regions. In Zanzibar and Kwara State Kadhis perform extra-judicial assignments like officiating during marriage ceremonies, sharing of the estate and conduct funeral service among others. The paper argues this amounts to a divided loyalty and that Kadhis must abide by their constitutional duties for the well-being of the society.

Kadhis' Courts in Zanzibar, and Kwara State differ in some areas of operations. The apex court on decisions on the Muslim personal matters by the Kadhis Courts in Zanzibar is the High Court of Zanzibar. In the case of Kwara State of Nigeria, whereas, matters that originate from the Area Courts can move to the Kwara State Sharia Court of Appeal to the Court of Appeal and terminate at the Supreme Court of Nigeria. Adjudication process on Muslim personal matters such marriage and related matters take long rigorous process before they are decided in Nigeria. Thus, adjudication process is rather tedious and expensive. Other distinguishing features are the fact that in Nigeria the Constitution makes provision for the existence of the Sharia Court of Appeal solely to handle the Muslim personal matters. At the head of the Kwara State Sharia Court of Appeal is the Grand Kadhi. This position is parallel to the position of the Chief Justice of Kwara State. In Zanzibar, there is constitutional provision for the existence of the position of Mufti which assists to tackle the contentious matters in the Kadhis' Courts.⁷⁵ The paper posits on matters that relate to other jurisprudence, if brought before the Kadhis' Courts, the leave of the court must be taken for the court to prepare for experts of other jurisprudence to assist the court. The paper explains that this is an area of lacuna in the case of Kwara State of Nigeria simply because there is the statutory provision for the existence of *Maliki* jurisprudence. The Kwara State Sharia Court of Appeal publishes annually law reports on the decisions of the Kadhis' Courts system. The paper contends this measure would go a long way to assist the record keeping of cases.

Way Forward for Kadhis' Courts in Contemporary Era

This article suggests that there is the need for an overall review of the legal framework and institutional arrangements to meet the changing trends in the contemporary world. The present secular State profile a colonial legacy needs to be reviewed for better implementation of Islamic jurisprudence in Zanzibar and Kwara State of Nigeria. Proper legal training should be given to those that hold the position of Kadhis. In this regard acquisition Law School training should made a prerequisite to be on Kadhis bench. This may enhance job mobility within the judiciary. Kadhis'

⁷⁵Section 1 Mufti Act No. 9 of 2000.

Courts are faith based adjudication mechanisms. Modern world is ever changing there is the need to open the doors to tolerate legal experts to be appointed as Kadhis provided the do not violate the principles of Islamic jurisprudence. Kadhis's Courts should therefore be used in the promotion of peaceful co-existence among the ethnics groups in Zanzibar and Kwara State of Nigeria. Decisions of Kadhis' Courts should endeavor to take into consideration of the demands of the modern world without mortgaging the position of Islamic jurisprudence. Adequate training programs on jurisprudential position in other regions should be packaged for Kadhis from time to time and they should be exposed international conferences and workshops on matters related to Islamic jurisprudence. This study recommends that fund should be made for research works on Islamic jurisprudence in order to expand the frontiers of knowledge for the well-being of the peoples of Zanzibar and Kwara State of Nigeria. There is the need to make available online published works on Islamic jurisprudence for the development of Islamic legal system in contemporary era. By and large, this paper suggests that Kadhis are given comprehensive computer training regularly to make them relevant to the modern times. In fact, their offices as a matter of urgency need to be connected to the internet services in order for them to have contemporary touch of development on Islamic jurisprudence in other Muslim regions of the world.

Also, the study recommends that women be appointed as Kadhis due their advancement in education in recent times. Gender disparity should be discouraged in line with the best practices under international law.

Conclusion

Islamic law legal regime had long historical antecedent and the application of *Shafii* and *Maliki* jurisprudence were adopted before the advent of the Europeans in these different regions of Africa. The legal framework and the institutional arrangements of the courts in Zanzibar and Kwara State of Nigeria had undergone reforms since independence. In both regions, the Courts were creations of statutes and were integral part of the hierarchical legal structure of the State. Similarly, the courts were under the supervision of the High Courts and therefore, Kadhis' Courts make annual returns of cases to higher courts. The Judge of High court hears appeal cases from the Chief Kadhi Courts in Zanzibar and the High Court functions as final appeal for cases on the Muslims personal matters. In Kwara State of Nigeria, Appeal from Area courts go to the Upper Area Courts before advancing to the Kwara State Sharia Court of Appeal on matters relating the Muslims personal matters such as marriage. From the Kwara State Sharia Court of Appeal, further appeal may be made to the Court of Appeal and such matters terminate at the Supreme Court the final court of adjudication process in Nigeria. In this regard, the Area Courts file annual returns of cases to the Kwara State Sharia Court of Appeal, which publishes annual reports.

With this arrangement most of the cases of the Area Courts are not just reported but published annually by the Kwara State Sharia Court of Appeal, Ilorin. Most cases are unreported in Zanzibar and few are published in Law report. In Nigeria, apart from the Kwara State Sharia Court of Appeal Annual Report, we also have the Sharia Law Reports of cases decided in different Courts that handle the Muslim Personal Matters such as marriage.

The Grand Kadhi heads the Kwara State Sharia Court of Appeal, parallel to the Chief Judge of Kwara State. Other cases from the Area Courts go to the High Courts, Court of Appeal and the Supreme Courts accordingly. Also, in the hierarchical structure, the Area Courts are parallel to the Magistrate Courts in both regions. With Kadhis' Courts jurisdiction strictly limited to Muslims personal matters in Zanzibar and Kwara State of Nigeria. There is no job mobility on this judicial positions, transfer service to magistracy or vice versa. In Zanzibar and Kwara State of Nigeria, the Judicial Service Commission, supervises appointment, promotion and discipline of the Kadhis. In Kwara State, the council of *ulamas* have no influence in such appointments. There is no statutory recognition of the Office of the *Mufti*. In Kwara State of Nigeria, *mufti* is a traditional title in the Muslim a society and the award of such traditional title in the custody of the Emir, traditional leader of the Muslims societies, particularly in Ilorin, Kwara State of Nigeria. The most outstanding transformation of the application of Islamic jurisprudence since independence in the two regions, was the constitutional provisions for the existence of the court systems and the institutional arrangements of the courts system. Other aspects of the legal provisions; the implementation of the enabling guidelines on the practice and the procedure for the Kadhis' Courts in Zanzibar and the Area Courts in Kwara State are yet to be reformed. The paper made an analysis on the differences and the similarities of the legal framework of the Kadhis Courts in Zanzibar and the Area Courts in Kwara State of Nigeria.

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