

back. The trial court at the end of the trial found in favour of the plaintiff (now appellant) and confirmed ownership of the disputed house to him. Dissatisfied with the decision of the Sharia Court Kankia, the respondent unsuccessfully appealed to the Upper Sharia Court (the intermediate court) which dismissed the respondent's appeal and further affirmed the decision of the Sharia Court. Further dissatisfied with the decision of the Upper Sharia Court (the intermediate court) the respondent again appealed to the Sharia Court of Appeal Katsina (the Lower Court). The latter court in its wisdom upturned the decisions of the two lower courts and decided the appeal in favour of the respondent. Aggrieved by the decision of the Sharia Court of Appeal, the appellant has now appealed to this court.

In keeping with the practice and the provisions of the rules of this court, the appellant's counsel on 23/6/2005, filed a Brief of Argument on behalf of the appellant. In the said brief, only one issue was proposed for the determination of the appeal which is whether the Katsina State Sharia Court of Appeal had jurisdiction to entertain the respondent's appeal, especially with regard to the provisions of Section 277(1) of the Constitution of the Federal Republic of Nigeria of 1999. The learned counsel for the respondent A.D. Umar Esq., did not file any brief of argument on behalf of his client. When we set to hear the appeal

on 28/2/2007 the appellant's counsel Uyi Igunma Esq. adopted his brief of argument without advancing any further argument. Mr A.D. Umar, who also appeared in court for the respondent, confirmed that he conceded to the appeal.

It is the submission of the learned appellant's counsel that the subject matter of the suit instituted at the trial court which subsequently found its ways to the intermediate and later to the lower court, is that of title to land. It was purely a land dispute between the plaintiff (appellant) and the respondent (defendant). He submitted that the subject matter is not of Islamic personal law and is therefore outside the purview of the jurisdiction of the lower court as specified in Section 277 (1) of the 1999 Constitution. He finally submitted that the hearing and determination of the appeal by the lower court is ultra vires. He on this submission, placed reliance on the case of Mani Ziza Vs. Ahmad Mamman (2002) 5 NWLR (Pt. 760) 243 at 266 D-G. He then urged that the decision of the lower court be set aside.

Now, since the provisions of Section 227 of the 1999 Constitution is the catch-phrase of this appeal and the pivot upon which the appellant solely relies on his submissions, I think it is apt to reproduce such provisions. It provides as follows:-

Section 277(1) "The Sharia Court of Appeal of a State shall in addition to such other jurisdiction as may be conferred upon it by the Law of

the State, exercise such appellate and supervisory jurisdiction in court proceedings involving questions of Islamic personal Law which the Court is competent to decide in accordance with the provisions of subsection (2) of this section.

2. For purposes of sub-section (1) of this section, the Sharia Court of Appeal 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 and relating, to family relationship or the guardianship of an infant.**
- (b.) where all the parties to the proceedings are Muslims, any question of Islamic Personal Law regarding a marriage, including the validity or dissolution of the marriage, or regarding family relationship a founding or guardianships of an infant.**
- (c) any question of Islamic Personal law regarding a wakf, gift, will or succession where the endower, donor, testator or deceased person is a Muslim;**

- (d) any question of Islamic Personal Law regarding an infant, prodigal or person of unsound mind who is a Muslim or the maintenance or guardianship of a Muslim who is physically or mentally infirm; or**
- (e) where all the parties to the proceeding whether or not they are 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.”**

There is no gainsaying that the above quoted provisions are clear and not nebulous at all. They therefore need no interpretation other than the literal one and the words therein must be given their ordinary meaning. The provisions should therefore serve as guide to Sharia Court of Appeal of the states and indeed the other grades of Area/Sharia Courts. These provisions have limited the jurisdiction of Sharia Court of Appeal of the states to entertain and determine appeals filed before them which subject matter only relates to Islamic personal law. What Islamic Personal Law matters relate are also specifically listed or defined in subsection (2) of the section. Again, in entertaining such appeals, efforts must be made by the courts to ascertain whether they have jurisdiction

or not. Reference must be made to the claim of the parties at the trial court or court of first instance. That is a well settled law. See Barclays bank Vs. Central Bank of Nigeria (1976) 6 SC 175; Adeyeri Vs. Opeyiri (1976) 9-10 SC 31; Mafisebe Vs. Ehuwa (2007) 1 SCNJ 256 at 290.

It is crystal clear, that the subject matter of the claim before the trial Sharia Court instituted by the appellant (as plaintiff) which found its ways on appeal through the Upper Sharia Court (intermediate Court) and later to the lower court, purely pertained to dispute on land or to put it in another way, it related to title to land (house). It in no way relates to Islamic Personal law at all. This is the point the appellant's counsel strongly holds which the respondent's counsel had also accepted. I am also at one with such stance of the two learned counsel.

It is therefore my judgment that the Sharia Court of Appeal Katsina State lacked jurisdiction to entertain, hear and determine the appeal in view of the clear provisions of Section 277(1) of the 1999 Constitution.

In the result, I see merit in the appeal. It succeeds and it is accordingly allowed by me. The appeal filed at the lower court is hereby struck out and its judgment dated 13th of May 2004 is also set aside.

The appellant is at liberty to take his appeal to the Katsina State High Court of Justice if he so wishes which is the proper and appropriate court having jurisdiction. No order as to costs.

**AMIRU SANUSI
JUSTICE, COURT OF APPEAL**

UYI IGUNMA ESQ. for the Appellant

A.D. UMAR ESQ. for the Respondent.