

UMMARU MATANKARI
v.
HAJIYA RABI YARON MANYA
IN THE SUPREME COURT OF NIGERIA

HOLDEN AT ABUJA

SC/CV/80/2024

MOHAMMED LAWAL GARBA
IBRAHIM MUHAMMAD MUSA SAULAWA
ADAMU JAURO
HABEEB ADEWALE O. ABIRU
ABUBAKAR SADIO UMAR

FRIDAY 4TH JULY, 2025

Court: Sharia Court of Appeal - jurisdiction thereof - where the claim is based on a gift - whether it falls within Islamic Personal Law - sec.277(1) of the constitution considered

Court: Sharia Court of Appeal - jurisdiction thereof - whether has jurisdiction in respect of a Muslim personal law regarding "Wakf, gift, will or succession etc" - sec.277(1)(2) of the CFRN considered

Court: Sharia Court of Appeal of a State - whether does not have jurisdiction in respect of pure declaration or ownership or title to land

Gift: Validity thereof - when in issue - whether when expressly challenged in an action

Gift: Meaning thereof - validity of gift under Islamic Law - the principle in Hari vs. Tsoho (2016)4 SCLR (Pt. 111) 563

Jurisdiction: Issues of succession and inheritance under the Islamic Law - whether it is within jurisdiction of Sharia Court of Appeal - sec.277(2)(c) of the constitution considered

Jurisdiction: Where the subject matter is gift rather than declaration of title - whether the Sharia Court of Appeal of a State has jurisdiction

Jurisdiction: Source - whether it is statutorily conferred on a court - implication thereof

Jurisdiction: Ingredients thereof - whether all the ingredients must exist for court to competently exercise jurisdiction - the principle in Madukolu vs. Nkemdilim

Jurisdiction: Relevance thereof - whether it is considered as the life wire of the adjudication process

Jurisdiction: How determined - whether to look at the statement of claim of a plaintiff

Jurisdiction: Decision of court - where a decision is reached without jurisdiction - whether such decision is nullity - position in Islamic Law considered

Statute: Constitution of Federal Republic of Nigeria, 1999 - sec.277 thereof - whether deals with Islamic Personal Law that is within the jurisdiction of Sharia Court of Appeal - the principle in Ali vs. Maiduguri (2024)17 NWLR (pt. 1967)

Words and Phrases: Wakf - meaning - the principle in Ungwan Garji vs. Ungwan Garji

Issue:

Whether the claim of the plaintiff/respondent before the trial court over the gift of a house in question is within the issue of Islamic personal law, as stipulated under section 227(2) (a) (c) of the 1999 constitution as amended.”

Facts:

The Plaintiff/Respondent sued the Defendant/Appellant at the Upper Area Court Kebbi and sought certain declaratory reliefs in respect of a house which the Plaintiff /Respondent claimed was a gift to her late husband. She further claimed that prior the death of her late husband, the Appellant did not make any claim of ownership over the house. In proof of her case, the Plaintiff /Respondent called two witnesses who established the house was a gift while Defendant /Appellant counter claimed ownership of the same house and called three witnesses who testified that the Defendant /Appellant inherited the house from his maternal grandfather.

At the close of hearing, the trial court gave judgment in favor of the Defendant/ Appellant. The Plaintiff /Respondent successfully appealed to the Sharia Court of Appeal, Kebbi. Dissatisfied, the Defendant/Appellant unsuccessfully appealed to the Court of Appeal Sokoto Division, hence a further appeal to the Supreme Court.

Held (unanimously dismissing the appeal):

1. On whether jurisdiction is statutorily conferred on a court-

The issue of a court's jurisdiction to adjudicate over a matter at all stages in the judicial hierarchy is a narrow one, it being an issue or question of strict law of whether the court possesses or is vested with the requisite jurisdiction to adjudicate over a matter or not. There is no hybrid situation on the question of jurisdiction of a court to adjudicate over a case or matter because it is purely statutory; the courts being creatures of the statutes, from which they derive their judicial power and authority to take cognizance of and conduct valid proceedings in which they can issue competent, legally binding and enforceable orders, decisions, judgments, etc. Where the relevant statute, including the constitution, does not confer the requisite jurisdiction on a court established by it, the court cannot arrogate to itself and the parties to an action or matter, cannot either by acquiescence or consent confer the jurisdiction on the court over the matter. Jurisdiction can neither be presumed nor implied. This position of the law applies in both the English common law and Islamic law and procedure. See *Madukolu v. Nkerndilim* (1962) 1 ALL NLR, 567, (1962) SCNLR, 341, *Captain Chachwos v. Ekimpex Ltd.* (1988) 1 SC, 161, (1988) 1 NWLR (Pt. 68) 88, *Onwudiwe v. FRN* (2006) 4 SC (pt. II) 70, (2006) 10NWLR (Pt. 988) 382, *Dangana v. Usman* (2013) 6 NWLR (Pt. 1349) 50, *Matari v. Dangaladima* (1993) 3 NWLR (Pt. 281) 266, *Ungwan Garji v. Ungwan Garji* (2014) 2 SQLR (Pt. II) 237, *Magaji v. Matari* (2014) 2 SQLR (Pt. II) 181.

2. On elements of jurisdiction of a court -

The basic ingredients of the jurisdiction of a court to competently adjudicate over a matter are now common knowledge in all courts of superior record in Nigeria having been repeatedly stated since the locus classicus case of *Madukolu v. Nkemdiliri* (supra). They are:

- (a) when the court is properly constituted as to number and qualification of its members ;
- (b) when a case is brought to the court by due process of the law;
- (c) there is no feature or factor which in law, deprives or prevents it from the exercise of the jurisdiction; and
- (d) when all the conditions precedent for its exercise of the jurisdiction have been fulfilled.

These are the essential and crucial elements and ingredients of jurisdiction that have to be conjunctively present or met for a court to competently exercise jurisdiction over a matter and the absence of any one of them will deprive the court of the requisite jurisdiction. See *A.G. Lagos State v. Dosunmu* (1989) 3 NWLR (Pt. 627) 1, *Jigi v. Abare* (1999) 1 NWLR (Pt. 586) 243, *Lumo v. Abu* (2016) 4 SQLR (Pt. IV) 687, *Achomu v. Okuwobi* (2017) 14 NWLR (Pt. 1584) 142, *Owanta v. INEC* (2020) 4 NWLR (Pt. 1713) 46.

3. On importance of jurisdiction -

The importance of jurisdiction in any adjudication cannot therefore be overemphasized. It is often described as the life wire of the adjudication process, without which every step taken in a case amounts to a nullity, no matter how well conducted and no matter how erudite

the decision emanating therefrom. Jurisdiction is the foundation of every case filed in court. Once there is no foundation, nothing can stand on it. *Skye Bank v. Iwu* (2017) 16 NWLR (Pt. 1590) 24. *Petrojessica Ent. Ltd v. Leventis Technical Co. Ltd* (1992) 5 NWLR (pt. 244) 675.

4. On how to determine jurisdiction of a court -

Generally, in order to determine whether a court has jurisdiction to entertain a matter, the court looks at the plaintiffs statement of claim before it. *A.-G Fed v. A.-G, Lagos State* (2017) 8 NWLR (Pt. 1566) 20, *Olofu v. Itodo* (2010) 18 NWLR (Pt. 1225) 545 . In other words, jurisdiction of a trial court is determined by the subject matter and claim before the court. *Nkuma v. Odili* (2006) 6 NWLR (Pt. 977) 587, *Oba Arerno II v. Adekanye* (2004) 13 NWLR (Pt. 891) 572.

5. On effect of decision reached without jurisdiction -

In Islamic law, the subject matter of dispute confers jurisdiction, and it is not permissible for a judge to entertain any dispute in respect of which he has no subject matter jurisdiction. In determining jurisdiction, the claim of the plaintiff is the sole determinant. Where the subject matter is not within the jurisdiction of the court, then there is nothing to adjudicate and the decision reached in the absence of jurisdiction is a nullity. *Hada v. Malumfashi* (1993) 7 NWLR (Pt. 303) 1, *Matari v. GaIadima* (1993) 3 NWLR (Pt. 287) 266, *Magaji v. Matari* (supra).

6. On jurisdiction of the Sharia Court of Appeal -

Since the Sharia Court of Appeal of Kebbi State whose jurisdiction is challenged in this appeal, is a creature of and established -pursuant to the Constitution, under the provisions of section 275(1), it is the Constitution that confers on it the requisite statutory jurisdiction to exercise in the discharge of its judicial functions and duty, as one of the courts of superior record of Nigeria. Section 277 (1) and (2) of the Constitution (as altered) provides for the jurisdiction of the Sharia Court of Appeal of a State in the following terms :-

- (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 civil 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 the purpose of subsection (1) of this section, the Sharia Court of Appeal shall be competent to decide-
 - (c) any question or Islamic personal law regarding a wakf, gift, will or succession where the endower, donor, testator or deceased person is a Muslim

From these provisions, it is clear that the Sharia Court of Appeal is vested with requisite constitutional jurisdiction to adjudicate and exercise appellate and supervisory jurisdiction in all civil proceedings involving questions of Islamic personal law regarding “wakf, gift, will or succession etc”, where the donor or deceased person is a muslim.

7. On meaning of "wakf" -

The Constitution did not define the words “wakf ’and “gift”, however in the case of Ungwan Garji v. Ungwan Garji (supra), the word “wakf ’ was defined as follows:-

“ A WAKF means a foundation of a charitable nature. It has been interpreted in Mukhtasar of Sidi Khalil (chapter 35 thereof) as an instance of “HUBUS” which means the giving or donation of the usufruct of a property which is in the entire or exclusive possession of the founder or donor for such a period as the property may remain in existence. The equivalent or synonymous term of HABS (singular) or

HUBUS (plural) is more appropriate for use in the Maliki School. It has been interpreted to mean a foundation or a Sadaqa al Jariyah or an endowment. In any case, the donation, endowment, or foundation is usually made for Allah's sake and therefore with a charitable intention-see Maliki Law (Translation of Mukhtasar) by Ruxon-page 281; Ihkarnul Ahkam (commentary on Tuhfah) p. 212-216. The donor may also be alive or dead and he may retain the possession of the property or its administration. Even after the death of the donor, the administration of the property donated may continue to be made in the fictitious name of the said donor and it does not mean that the said property will be reverted to his children to be inherited."

This definition of "Wakf" has rendered it inapplicable and irrelevant to the appeal.

8. On meaning and validity of a gift -

The word "gift" was defined in *Hari v. Tsoho* (2016) 4 SQLR (Pt. III) 563

to mean:-

"The idea of a gift under the Islamic Law is the transfer of a corpus of a thing to the donee. Thus, in order to be valid, the gift must satisfy the following conditions :-

- (a) A declaration of the gift by the donor;
- (b) Acceptance of the subject matter of the gift by the donee himself or by his agent;
- (c) Possession should be delivered by the donor to the donee."

See also *Opobiyi v. Muniru* (2016) 4 SQLR (Pt. II) 213, *Burton's Legal Thesaurus*, 3rd Edition "The Lawyer's Roget's", P251.

9. On jurisdiction of Sharia Court of Appeal -

With the definition of the word "gift" and the nature of the claim of the Respondent before the trial court, it is beyond rational argument that the Sharia Court of Appeal had/has the requisite constitutional jurisdiction to entertain and adjudicate over the appeal by the

Respondent against the decision/judgment of the Upper Sharia Court, since the subject matter of the claim was a gift and not one of pure ownership of the house in question. It was the Appellant, who after denying the claim by the Respondent, that counter claimed that the house was owned by his maternal grandfather; Isah. The claim as presented by the Respondent before the trial court, once more, was in respect of and involved the gift of the house to her late husband by Ibrahim and which she inherited and has been in possession of for about forty (40) years without challenge. The law is firmly established that the Sharia Court of Appeal of a State is not vested with the statutory jurisdiction to entertain and adjudicate over appeals involving the issue or question of pure declaration of ownership or title to land, simpliciter, since it is not an issue or question relating to Islamic personal law, as provided for in section 277 of the Constitution. This is the position stated and restated in the decisions cited by learned counsel for the Appellant, in particular, and countless others including *Muchiya v. Dogo* (2015) 3 SQLR (Pt. II) 224, *Magaji v. Matari* (supra), *Usnan v. Kareem* (1995) 2 NWLR (Pt. 379) 537, (2006) ALL FWLR (Pt. 314) 363, *Muninga v. Muninga* (1997) 11 NWLR (Pt. 527) 1, *Maida v. Audu* (2000) 4 NWLR (Pt. 65 1) 99, *Jiji v. Abare* (1999) 1 NWLR (Pt. 586) 243 .

10. On where validity of a gift is in issue-

Perhaps, I should state and point out the claim by the Respondent before the trial court did not raise or involve the question or issue of the validity of the gift of the house to her husband since it was not disputed and so the question or issue is not material or relevant in

the determination of the nature of the claim and whether the Sharia Court of Appeal has the jurisdiction to adjudicate on the appeal against the decision of the trial court. The question or issue of the validity of a gift only becomes relevant and material when and where it is specifically challenged and in dispute between parties to a case. That was not the case in the appeal before the Sharia Court of Appeal and it is non-sequitur in this appeal.

11. On whether issue of succession and inheritance are Islamic Personal Law -

In addition, the counter claim by the Appellant before the trial Upper Sharia Court involves and relates to and totally tidied on succession or inheritance of the house in question from the Appellant's maternal grand-father; Isah, through the Appellant's mother.

This was the counter claim considered on the merit and eventually granted by the trial court on the basis of such inheritance and succession, which are pure issues of Islamic Personal Law. See *Gwabro v. Gwabro* (1998) 4 NWLR (pt. 544) 60, *Magaji v. Matari* (supra).

The appeal against the decision of the trial court on the basis of the issues of inheritance and succession on which the appellant based his counter claim for the house in dispute, was a valid and competent appeal involving questions of Islamic Personal Law over which Sharia Court of Appeal possesses the requisite constitutional jurisdiction to adjudicate by dint of the provisions in Section 277 (2) (c) of the Constitution.

12. On the subject matter of the claim -

Consequently, on the basis of both the claim by the Respondent which involved a gift arising from inheritance and the Appellant's counter claim; also based on inheritance and succession from his mother; which are issues or questions involving Islamic Personal Law.

It is manifest that the Sharia Court of Appeal is imbued with the requisite jurisdiction to adjudicate over the appeal-against the decision of the trial court, by the Respondent.

A close look at the Respondents claim and evidence would put the above position beyond argument.

:I, Hajiya Rabi is suing Umaru Matankari over the issue that my husband Matar uncle Mal. Bawa gave the gift of a house to my husband for the past 40 years or more. The house was in possession of my husband and we are occupying it. But now after the death of my husband called Yaron Many, the said Umaru claimed that he has right over this house. This he did not raise this issue prior to the death of my husband. Based on this I sued him to know the reason for his claim. That it was Ibrahim who gave the gift of this house to my husband 40 years ago. The said Ibrahim Tungar Kade gave hint the gift of the house and 2 farms, which he inherited from his father".

Once more, from the above claim, the subject matter in this appeal is a gift and not declaration of title or ownership of land; simpliciter.

The evidence of the Appellant and the Respondent at the trial court further confirms that the subject matter is that of gift.

13. On jurisdiction of the Sharia Court of Appeal -

It is clear from the nature of the claim by the Respondent before the trial court, it was one of and in relation to the alleged gift of the house in question by Ibrahim to her late husband about forty (40) years ago, at the time of the claim and which she and her husband had been in possession of since then without any challenge before his death.

Having confirmed that the subject matter is that of gift, the Sharia Court of Appeal is vested with jurisdiction to entertain such matters. Section 277 (1) of the 1999 Constitution vests the Sharia Court of Appeal with jurisdiction to exercise appellate and supervisory jurisdiction

in civil proceedings involving questions of Islamic Law which the court is competent to decide in accordance with the provisions of subsection (2) of that section.

14. On scope of section 277 of CFRN, 1999 -

In the recent authority of the Supreme Court, *Ali v Maiduguri* (2024) 17 NWLR (Pt 1967), section 277 Of the 1999 Constitution received judicial interpretation thus :

“By virtue of section 277(1) of the 1999 Constitution (as amended), 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 civil proceedings involving questions of Islamic personal law. By virtue of section 277 (2) of the 1999 Constitution (as amended), the questions of Islamic personal law the Sharia Court of Appeal shall be competent to exercise appellate and supervisory jurisdiction over : -

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 a marriage and relating to family relationship or the (a) guardianship of an infant.

where all the parties to the proceedings are Muslims any question of Islamic personal law regarding a marriage, including the validity or dissolution regarding of that marriage or family relationship, a founding (b) or the guardianship of an infant. any question of Islamic personal law regarding a Wakf, gift, will or succession where the endower, donor, testator or (c) deceased person is a Muslim, any question of Islamic personal law regarding an infant, prodigal , or person of unsound mind who is a Muslim or the maintenance or the guardianship of a Muslim who is physically or mentally (d) infirmed; or 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 (e) Islamic personal law, any other question. ”

Per UMAR, J.S.C. at page 306, paras. E-F:

" it is to be noted, that these subsections relate to marriage and its dissolution, family relationship and guardianship of infants. They also include wakf, gift, will or succession where the endower, donor, testator or deceased person is a Muslim. Included therein, is the determination of any question of Islamic personal law regarding a Muslim, an infant, prodigal, person of unsound mind, on the maintenance or guardianship of a physically or mentally infirm Muslim.

Per UWA, J.S.C. at page 313, paras. B-D:

" it is clear to my mind that the respondent's claim which borders around a share of the inheritance that has been allegedly withheld from the respondent by the 1st appellant falls within section 277 (supra) . The provision covers dispute over any inheritance which is being allegedly withheld from the heirs. Even the claim of gift raised by the 1st appellant falls within the said provisions. The lower courts therefore had the requisite jurisdiction to have adjudicated on the matter .

History of the case:

Supreme Court:

Names of Justices who sat on the appeal: MOHAMMED LAWAL GARBA , IBRAHIM MUHAMMAD MUSA SAULAWA, ADAMU JAURO, HABEEB ADEWALE O. ABIRU, ABUBAKAR SADIO UMAR

Appeal No. SC/CV/80/2024

Date of Judgment: Friday, 4th July, 2025

Names of Counsel: Yakubu S. Ba bva, Esq. for the Appellant. Ahmed Mohammed Jega. Esq. for the Respondent.

GARBA, JSC (Delivering lead Judgment): The Respondent had sued the Appellant at the Upper Sharia Court, Jega (trial court) and claimed as follows:

"I, Hajiya Rabi is suing Umaru Matankari over the issue that my husband Matar uncle Mal. Bawa gave the gift of a house to my husband for the past 40 years or more. The house was in possession of my husband and we are occupying it. But now after the death of my husband called Yaron Many, the said Umaru claimed that he has right over this house. This he did not raise this issue prior to the death of my husband. Based on this I sued him to know the reason for his claim. That it was Ibrahim who gave the gift of this house to my husband 40 years ago. The said Ibrahim Tungar Katie gave him the gift of the house and 2 farms , which he inherited from his father ”.

In order to prove the claim, the Respondent called two (2) male witnesses; Salisu Saidu and Umaru Rabi whose evidence supported the claim of gift of the house in dispute to, her late

husband by Ibrahim (Illo). Two (2) other witnesses called by the Respondent on a document written at the Village Head's House about the gift of a farm, not part of the claim before the trial court, did not testify on the gift of the house in dispute.

On his part, the Appellant denied the Respondent's claim and counter claimed that the house belonged to his maternal grandfather; Isah and that his mother; Aishatu was entitled to a share thereof. He called three male witnesses; Liman Sanusi, Alh. Zaki Nufawa and Muharnmad Sam Nufawa who gave evidence that the house belonged to Isah; the Appellant's maternal grandfather.

At the conclusion of trial, the trial court confirmed that the house is for inheritance and entered judgment in favour of the Appellant. Aggrieved by the decision of the trial court, the Respondent appealed to the Sharia Court of Appeal, Kebbi State. The Sharia Court of Appeal annulled the decision of the trial court and affirmed the Respondent's right to the house which was given to her husband as a gift by Ibrahim. Dissatisfied with the decision of the Sharia Court of Appeal, the Appellant appealed to the CouN of Appeal,

Sokoto Division (court below). The court below resolved the appeal--in

favour of the Respondent, hence the appeal to this court.

The Notice of Appeal was filed on the 10/03/23 and contains two (2)

grounds in the following terms:-

GROUND ONE

The Lower Court erred in law and thus occasioned a miscarriage of justice when it held as follows:

“The case at hand fall within the purview of Section 277(2) of 1999 Constitution as categorically stated in the Respondent statement of claim before the trial court.”

PARTICULARS OF ERROR

1. The Appellant's claim relates to dispute over ownership of the property in question.

2. The Appellant's claim has no connection with the gin of the property given to the Respondent's deceased husband by his uncle
- 3 . The Appellant claimed that he is the owner of the property having inherited same from his biological father.
4. The Respondent's claim falls outside the purview of Section 277(2) of the 1999 Constitution of the Federal Republic of Nigeria(as amended)
5. The Appellant did not challenge or contest the act of gin of the property in question to the Respondent's deceased husband by his uncle at the trial court.
6. The Respondent's case as contained in the statement of claim before the trial court has no connection with the gia but the ownership of the property in dispute.

7. The case of the Respondent falls under the exclusive original jurisdiction of Kebbi State High Court of Justice not Kebbi State Sharia Court of Appeal-(the trial court).

GROUND TWO

The Lower Court erred in law and thus occasioned a miscarriage of justice when it held thus :

“Flowing from the above, this appeal is without any merit and it is here by dismissed as such.”

PARTICULARS OF ERROR

1. It is trite law that the trial court has no jurisdiction over land dispute.
2. The Appellant's claim border on the title/or ownership of the land in dispute.
- 3 . The Respondent's claim does not fall within the purview of Islamic personal Law.
4. The Respondent through her counsel had conceded that the Appellant's claim is in respect of the house in dispute and not the **gift**
5. The Appellant has every right to challenge the ownership of the property in dispute though the Respondent had claimed that the property was given to her deceased husband by his uncle.
6. It is Kebbi State High Court of Justice that has the exclusive original jurisdiction to adjudicate on matters relating to the ownership of land not Kebbi State Sharia Court of Appeal (the trial court).”

In the Appellant's Brief filed on the 10/09/24, deemed on the 12/02/25, a

sole issue was formulated for determination, by Yakubu S. Bawa Esq., of

counsel thus :-

“Whether the lower court was right when it held that the Respondent’s case falls within the purview of Section 277(2) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) hence Shariah Court of Appeal, Kebbi State has jurisdiction to entertain the appeal which is in relation to declaration of title to land. (Distilled from Grounds 1 and 2 of the Notice of Appeal)”

The Respondent’s Brief settled by Mohammed Ahmed Jega, Esq. was filed

on the 31/01/25, also deemed on the 12/02/25 and the Appellant’s lone issue

was couched in slightly different form for decision by the court as follows:-

“Whether the claim of the plaintiff/respondent before the trial court over the gift of a house in question is within the issue of Islamic personal law, as stipulated under section 227(2) (a) (c) of the 1999 constitution as amended.”

This appeal is against the judgment of the Court of Appeal, Sokoto Division

(court below) delivered on the 18/01/23, which affirmed the decision of the

Kebbi State Sharia Court of Appeal, Bimin Kebbi, given in favour of the

Respondent.

As can be easily observed, the difference between the issues formulated by

the learned counsel for the parties is like the one between six (6) and half a

dozen since they both question the jurisdiction of the Sharia Court of Appeal

to adjudicate over the appeal filed before it by the Respondent,

Submissions of the Appellant’s Counsel

Counsel submitted that jurisdiction is the lifeline of action, the existence or absence of it in a court goes to the root of the-matter and sustains or nullifies the decision the court may arrive

at. *Hamzat v. Sami* (2015) 5 NWLR (Pt. 1453) 486. Counsel further submitted that what determines the jurisdiction of court is the statement of claim of the Plaintiff and it is significant for the court to look at it to ascertain if it has jurisdiction over the parties or subject matter of the dispute between the parties. *Mogaji v. Dattijo* (2003) 1 SCLR (Pt. 11) 96, *Usman v. Kareem* (1995) 2 NWLR (Pt. 379), *Inakoju & Ors. v. Adeleke & Ors.* (2007) LPELR- 1510 (SC). According to counsel, as can be gleaned from the statement of claim, the Respondent claimed ownership of the house which is the subject matter of the dispute, therefore the claim is completely connected and related to dispute over ownership of the house in dispute. Counsel stated that according to the Respondent, the house was given to her late husband as a gift by his maternal uncle, one Ibrahim Tungar Kade. After the death of her husband, the Appellant claimed that he has a right over the house. The main issue for determination at the Upper Sharia Court was to ascertain the true and rightful owner of the house.

Counsel stated that the Upper Sharia Court is expected to first make an inquiry regarding the rightful and true owner of the house in dispute. It is also the contention of counsel that the claim of the Respondent borders and relates to declaration of the title and legal right of ownership of the house. in c_ iispute. He relied on *Oko & Ors. v. A.G., Ebonyi'-State* (2021) LPEL11- 54988 (SC) and *SPDC (Nig.) Ltd & Ors. v. Nwawka* (2003) LPELR-3206 (SC) on the definition of a “right” and said that the right the Appellant is laying claim to is the right connected to the ownership of the house in dispute and the house does not belong to Ibrahim,

the maternal uncle of her late husband. Hence, Ibrahim cannot give a gift of what he doesn't have. *Nemo dat quod non habet*. Ibrahim v. Ogunde & Ors. (2009) LPELR-1411 (SC). The gift can only be valid if the ownership of the house in dispute resides in him or he has the exclusive ownership of the house. Yaron Maya, the late husband of the Respondent took over the possession of the house from his late maternal uncle. The house in dispute from the standpoint of Islamic Law of inheritance belonged to the five children of the real and original owner of the house, their biological father, Mal. Isah who was the grandfather of the Appellant.

Counsel submitted that it is trite Islamic law doctrine that a muslim can only give a gift of a property provided he is the owner of the said property he intends to give as a gift. The property must form part of his estate and must belong to him before such a gift can be valid under Islamic Law of Inheritance. GARBATI v, GARBATI & ANOR (2017) LPELR-43091 (CA). The Respondent asserted that the house was given to her late husband by his maternal uncle, therefore the appropriate legal -step is for her to adduce evidence before the court to prove her root of title and ownership of the house. I.G.N (NI(3) LTD & ANOR v. PEDMAR (NIG.) LTD & ANOR. (20 13) LPELR-41064 (CA).

Counsel stated that the gravamen of the Appellant's contention is that the house in dispute does not belong to Ibrahim, who was the maternal uncle of the Respondent's late husband, therefore, the only competent court that is clothed with the requisite jurisdiction to determine the title and ownership of the house in dispute is the Kebbi State High Court and not the Sharia Court of

Appeal. *Adetayo v. Ademola & Ors.* (2010) LPELR-155 (SC). According to counsel, the lower court erred when it held that the Respondent's case falls within section 277(2) of the 1999 Constitution, hence the Sharia Court of Appeal of Kebbi State has the jurisdiction to entertain and determine the matter. Section 277(2) of the 1999 Constitution has been given judicial interpretation, with emphasis that the Sharia Court of Appeal has no jurisdiction to entertain appeals in relation to declaration of title to land. *Rabiu & Ors. v. Musa & Ors.* (2019) LPELR-48137 (CA). The Sharia Court of Appeal has jurisdiction to entertain appeals related to any dispute involving questions of Islamic personal law. The claim before the lower court is completely outside the purview of the jurisdiction of the Sharia Court of Appeal.

Counsel has contended that the relief the Respondent sought from the trial court was for title and ownership of the house be declared to her exclusively. These facts support the Appellant's case that the subject matter of controversy between the parties is purely and exclusively land dispute that is connected or related to declaration of title or ownership. In other words, under Islamic law of inheritance, before the estate or property can be shared among the legal surviving heirs, it is imperative to first ascertain the true and rightful owner of the estate or property. The trial court acted in error when it delved into the issue of the distribution of the house in dispute, as that was not the grievance and claim of the Respondent.

Counsel urged this court to allow the appeal and set aside the judgment of the lower court and remit the case to the Chief Justice of Kebbi State High Court for reassignment to a Judge since the dispute between the parties is related to declaration of title to land.

Submissions of Respondent's Counsel

Counsel to the Respondent submitted that jurisdiction of a court is determined by the plaintiff's claim and not by the defendant's defence and this is determined by looking at the plaintiff's statement of claim to see the nature of the claim. He relied on *African Petroleum Plc. v. Akinawo* (2012) 4 NWLR (part 1289) 100 at 115.

Counsel made reference to the Statement of Claim as well as Section 277 (2) (c) and (e) of the 1999 Constitution. He stated that the respondent's claim is over the gift of a house given to her husband by one Ibrahim Tungm Kade for the past 40 years. The respondent and her husband were in possession and occupation of the said house and it was after the demise of her husband that the appellant claimed right to the house. Counsel further submitted that the Shariah Court of Appeal has the exclusive jurisdiction to hear and determine any appeal on any question of Islamic personal law regarding wakf, gift, will or succession where the endower, donor, testator or deceased person is a Muslim. Reliance was placed on *Magaji v. Dattijo* (2013) 1 SCLR 106. According to him, the case at hand falls within the purview of section 277 (2) a-e of the 1999 Constitution.

Counsel stated that the evidence of DWI is that Ibrahim gave the gift of the house to Yaron Many (the Respondent's husband) and PWI also confirmed the gift of the house to Yaron

Manya, therefore, there is no dispute as to the gift of the house to Yaron Many. Counsel further stated that the Shariah Court of Appeal and the Court of Appeal were perfectly in order to have assumed jurisdiction to hear the appeal under section 277(2) of the 1999 Constitution of the Federal Republic of Nigeria.

Counsel stated that the Appellant, having contended at the trial court, that the house in dispute is subject to inheritance under Islamic law, is now estopped from arguing that the claim is title to the property. He submitted that a party must be consistent in presenting his case and litigation is not a game of chance. He relied on *Ararurne v. Uba* (2021) 8 NWLR (Pt. 1779) 511 SC, *Ezemba v. Ibeneme* (2004) 14 NWLR (Pt. 894), *Obaje v. N.A.M.A* (2024) 6 NWLR (Pt. 1933) 119.

Counsel urged this court to dismiss this appeal and affirm the decision of the Court of Appeal.

Resolution

The issue of a court's jurisdiction to adjudicate over a matter at all stages in the judicial hierarchy is a narrow one, it being an issue or question of strict law of whether the court possesses or is vested with the requisite jurisdiction to adjudicate over a matter or not. There is no hybrid situation on the question of jurisdiction of a court to adjudicate over a case or matter because it is purely statutory; the courts being creatures of the statutes, from which they derive their judicial power and authority to take cognizance of and conduct valid

proceedings in which they can issue competent, legally binding and enforceable orders, decisions, judgments, etc. Where the relevant statute, including the constitution, does not confer the requisite jurisdiction on a court established by it, the court cannot arrogate to itself and the parties to an action or matter, cannot either by acquiescence or consent confer the jurisdiction on the court over the matter. Jurisdiction can neither be presumed nor implied. This position of the law applies in both the English common law and Islamic law and procedure. See *Madukolu v. Nkerndilim* (1962) 1 ALL NLR, 567, (1962) SCNLR, 341, *Captain Chachwos v. Ekimpex Ltd.* (1988) 1 SC, 161, (1988) 1 NWLR (Pt. 68) 88, *Onwudiwe v. FRN* (2006) 4 SC (pt. 11) 70, (2006) 10NWLR (Pt. 988) 382, *Dangana v. Usman* (2013) 6 NWLR (Pt. 1349) 50, *Matari v. Dangaladima* (1993) 3 NWLR (Pt. 281) 266, *Ungwan Garji v. Ungwan Garji* (2014) 2 SQLR (Pt.11) 237, *Magaji v. Matari* (2014) 2 SQLR (Pt. 11) 181.

The basic ingredients of the jurisdiction of a court to competently adjudicate over a matter are now common knowledge in all courts of superior record in Nigeria having been repeatedly stated since the locus classicus case of *Madukolu v. Nkemdirin* (supra). They are:

- (a) when the court is properly constituted as to number and qualification of its members ;
- (b) when a case is brought to the court by due process of the law;
- (c) there is no feature or factor which in law, deprives or prevents it from the exercise of the jurisdiction; and

(d)when all the conditions precedent for its exercise of the jurisdiction
have been fulfilled.

These are the essential and crucial elements and ingredients of jurisdiction that have to be conjunctively present or met for a court to competently exercise jurisdiction over a matter and the absence of any one of them will deprive the court of the requisite jurisdiction. See *A.G. Lagos State v. Dosunmu* (1989) 3 NWLR (Pt. 627) 1, *Jigi v. Abare* (1999) 1 NWLR (Pt. 586) 243, *Lumo v. Abu* (2016) 4 SQLR (Pt. IV) 687, *Achomu v. Okuwobi* (2017) 14 NWLR (Pt. 1584) 142, *Owanta v. INEC* (2020) 4 NWLR (Pt. 1713) 46.

The importance of jurisdiction in any adjudication cannot therefore be overemphasized. It is often described as the life wire of the adjudication process, without which every step taken in a case amounts to a nullity, no matter how well conducted and no matter how erudite the decision emanating there. Born, Jurisdiction is the foundation of every case filed in court. Once there is no foundation, nothing can stand on it. *S-kya Bank v. Iwu* (2017) 16 NWLR (Pt. 1590) 24. *Petrojessica Ent. Ltd v. Leventis Technical Co. Ltd* (1992) 5 NWLR (pt. 244) 675.

Generally, in order to determine whether a court has jurisdiction to entertain a matter, the court looks at the plaintiffs statement of claim before it. *A.-G Fed v. A.-G, Lagos State* (2017) 8 NWLR (Pt. 1566) 20, *Olofu v. Itodo* (2010) 18 NWLR (Pt. 1225) 545 . In other words, jurisdiction of a trial court is determined by the subject matter and claim before the court. *Nkuma v. Odili* (2006) 6 NWLR (Pt. 977) 587, *Oba Arerno II v. Adekanye* (2004) 13 NWLR (Pt. 891) 572.

In Islamic law, the subject matter of dispute confers jurisdiction, and it is not permissible for a judge to entertain any dispute in respect of which he has no subject matter jurisdiction. In determining jurisdiction, the claim of the plaintiff is the sole determinant. Where the subject matter is not within the jurisdiction of the court, then there is nothing to adjudicate and the decision reached in the absence of jurisdiction is a nullity. *Hada v. Malumfashi* (1993) 7 NWLR (Pt. 303) 1, *Matari v. GaIadima* (1993) 3 NWLR (Pt. 287) 266, *Magaji v. Matari* (supra).

Now, since the Sharia Court of Appeal of Kebbi State whose jurisdiction is challenged in this appeal, is a creature of and established -pursuant to the Constitution, under the provisions of section 275(1), it is the Constitution that confers on it the requisite statutory jurisdiction to exercise in the discharge of its judicial functions and duty, as one of the courts of superior record of Nigeria. Section 277 (1) and (2) of the Constitution (as altered) provides for the jurisdiction of the Sharia Court of Appeal of a State in the following terms :-

- (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 civil 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 the purpose of subsection (1) of this section, the Sharia Court of Appeal shall be competent to decide-
 - (c) any question or Islamic personal law regarding a wakf, gift, will or succession where the endower, donor, testator or deceased person is a Muslim

From these provisions, it is clear that the Sharia Court of Appeal is vested with requisite constitutional jurisdiction to adjudicate and exercise appellate and supervisory jurisdiction in

all civil proceedings involving questions of Islamic personal law regarding “wakf, gift, will or succession etc”, where the donor or deceased person is a muslim. The Constitution did not define the words “wakf ’and “gift”, however in the case of Ungwan Garji v. Ungwan Garji (supra), the word “wakf ’ was denied as follows:-

“ A WAKF means a foundation of a charitable nature. It has been interpreted in Mukhtasar of Sidi Khalil (chapter 35 thereof) as an instance of “HUBUS” which means the giving or donation of the usufruct of a property which is in the entire or exclusive possession of the founder or donor for such a period as the property may remain in existence. The equivalent or synonymous term of HABS (singular) or HUBUS (plural) is more appropriate for use in the Maliki School. It has been interpreted to mean a foundation or a Sadaqa al Jariyah or an endowment. In any case, the donation, endowment, or foundation is usually made for Allah’s sake and therefore with a charitable intention-see Maliki Law (Translation of Mukhtasar) by Ruxon-page 281; Ihkarnul Ahkam (commentary on Tuhfah) p. 212-216. The donor may also be alive or dead and he may retain the possession of the property or its administration. Even after the death of the donor, the administration of the property donated may continue to be made in the fictitious name of the said donor and it does not mean that the said property will be reverted to his children to be inherited.”

This definition of “Wakf ’ has rendered it inapplicable and irrelevant to the appeal.

The word “gift” was defined in Hari v. Tsoho (2016) 4 SQLR (Pt. III) 563

to mean:-

“The idea of a gift under the Islamic Law is the transfer of a corpus of a thing to the donee. Thus, in order to be valid, the gift must satisfy the following conditions :-

- (a) A declaration of the gift by the donor;
- (b) Acceptance of the subject matter of the gift by the donee himself or by his agent;
- (c) Possession should be delivered by the donor to the donee.”

See also Opobiya v. Muniru (2016) 4 SQLR (Pt. II) 213, Burton’s Legal Thesaurus, 3rd

Edition “The Lawyer’s Roget’s”, P251, With the definition of the word “gift’ and the nature

of the claim of the Respondent before the trial court, it is beyond rational argument that the Sharia Court of Appeal had/has the requisite constitutional jurisdiction to entertain and adjudicate over the appeal by the Respondent against the decision/judgment of the Upper Sharia Court, since the subject matter of the claim was a gift and not one of pure ownership of the house in question. It was the Appellant, who after denying the claim by the Respondent, that counter claimed that the house was owned by his maternal grandfather; Isah. The claim as presented by the Respondent before the trial court, once more, was in respect of and involved the gift of the house to her late husband by Ibrahim and which she inherited and has been in possession of for about forty (40) years without challenge. The law is firmly established that the Sharia Court of Appeal of a State is not vested with the statutory jurisdiction to entertain and adjudicate over appeals involving the issue or question of pure declaration of ownership or title to land, simpliciter, since it is not an issue or question relating to Islamic personal law, as provided for in section 277 of the Constitution. This is the position stated and restated in the decisions cited by learned counsel for the Appellant, in particular, and countless others including *Muchiya v. Dogo* (2015) 3 SQLR (Pt. 11) 224, *Magaji v. Matari* (supra), *Usnan v. Kareem* (1995) 2 NWLR (Pt. 379) 537, (2006) ALL FWLR (Pt. 314) 363, *Muninga v. Muninga* (1997) 11 NWLR (Pt. 527) 1, *Maida v. Audu* (2000) 4 NWLR (Pt. 65 1) 99, *Jiji v. Abare* (1999) 1 NWLR (Pt. 586) 243 .

Perhaps, I should state and point out the claim by the Respondent before the trial court did not raise or involve the question or issue of the validity of the gift of the house to her

husband since it was not disputed and so the question or issue is not material or relevant in the determination of the nature of the claim and whether the Sharia Court of Appeal has the jurisdiction to adjudicate on the appeal against the decision of the trial court. The question or issue of the validity of a gift only becomes relevant and material when and where it is specifically challenged and in dispute between parties to a case. That was not the case in the appeal before the Sharia Court of Appeal and it is non-sequitur in this appeal.

In addition, the counter claim by the Appellant before the trial Upper Sharia Court involves and relates to and totally tied on succession or inheritance of the house in question from the Appellant's maternal grand-father; Isah, through the Appellant's mother.

This was the counter claim considered on the merit and eventually granted by the trial court on the basis of such inheritance and succession, which are pure issues of Islamic Personal Law. See *Gwabro v. Gwabro* (1998) 4 NWLR (pt. 544) 60, *Magaji v. Matari* (supra).

The appeal against the decision of the trial court on the basis of the issues of inheritance and succession on which the appellant based his counter claim for the house in dispute, was a valid and competent appeal involving questions of Islamic Personal Law over which Sharia Court of Appeal possesses the requisite constitutional jurisdiction to adjudicate by dint of the

provisions in Section 277 (2) (c) of the Constitution.

Consequently, on the basis of both the claim by the Respondent which involved a gift arising from inheritance and the Appellant's counter claim; also based on inheritance and succession from his mother; which are issues or questions involving Islamic Personal Law, it is manifest that the Sharia Court of Appeal is imbued with the requisite jurisdiction to adjudicate over the appeal-against the decision of the trial court, by the Respondent.

A close look at the Respondents claim and evidence would put the above position beyond argument.

:I, Hajiya Rabi is suing Umaru Matankari over the issue that my husband Matar uncle Mal. Bawa gave the gift of a house to my husband for the past 40 years or more. The house was in possession of my husband and we are occupying it. But now after the death of my husband called Yaron Many, the said Umaru claimed that he has right over this house. This he did not raise this issue prior to the death of my husband. Based on this I sued him to know the reason for his claim. That it was Ibrahim who gave the gift of this house to my husband 40 years ago. The said Ibrahim Tungar Kade gave hint the gift of the house and 2 farms, which he inherited from his father".

Once more, from the above claim, the subject matter in this appeal is a gift and not declaration of title or ownership of land; simpliciter.

The evidence of the Appellant and the Respondent at the trial court further confirms that the subject matter is that of gift. The evidence is hereunder reproduced:

"Court: To the plaintiff: You stated that Ibrahim gave the gift of the house to Yaron Many.

Ans: Really the uncle of Ibrahim is my husband and he gave the house to my husband. The house belonged to them and it was given to him more than 40 years ago. That even when I married him prior to his death we spend more than 30 yrs and he said that the house was given to him more than 10 years then. That he/we stay in the house more than 40 years .

Court: To the Respondent: You heard what she said, what do you have to say?

Ans: I heard what she said but it is not true. This is because the house originally is the inheritance of MaI. Isah, our grandfather and the father of Mohammad Makau, Sulaiman, Abubakkar and Aishatu.

Therefore, it is not possible for one person to take possession of the inheritance of many people and give the gift of it. That inheritance is of right, as such we are requesting the Court to divide this inheritance and allote to each heir his share."

It is clear from the nature of the claim by the Respondent before the trial court, it was one of and in relation to the alleged gift of the house in question by Ibrahim to her late husband about forty (40) years ago, at the time of the claim and which she and her husband had been in possession of since then without any challenge before his death.

Having confirmed that the subject matter is that of gift, the Sharia Court of Appeal is vested with jurisdiction to entertain such matters. Section 277 (1) of the 1999 Constitution vests the Sharia Court of Appeal with jurisdiction to exercise appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic Law which the court is competent to decide in accordance with the provisions of subsection (2) of that section.

In the recent authority of the Supreme Court, *Ali v Maiduguri* (2024) 17

NWLR (Pt 1967), section 277 Of the 1999 Constitution received judicial

interpretation thus :

“By virtue of section 277(1) of the 1999 Constitution (as amended), 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 civil proceedings involving questions of Islamic personal law. By virtue of section 277 (2) of the 1999 Constitution (as amended), the questions of Islamic personal law the Sharia Court of Appeal shall be competent to exercise appellate and supervisory jurisdiction over : -

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 a marriage and relating to family relationship or the (a) guardianship of an infant.

where all the parties to the proceedings are Muslims any question of Islamic personal law regarding a marriage, including the validity or dissolution regarding of that marriage or family relationship, a founding (b) or the guardianship of an infant.

any question of Islamic personal law regarding a Wakf, gift, will or succession where the endower, donor, testator or (c) deceased person is a Muslim, any question of Islamic personal law regarding an infant, prodigal , or person of unsound mind who is a Muslim or the maintenance or the guardianship of a Muslim who is physically or mentally (d) infirmed; or where all the parties to the proceedings being Muslims have requested the court that hears the case in the flrst instance to determine that case in accordance with (e) Islamic personal law, any other question. ”

Per UMAR, J.S.C. at page 306, paras. E-F:

" it is to be noted, that these subsections relate to marriage and its dissolution, family relationship and guardianship of infants. They also include wakf, gift, will or succession where the endower, donor, testator or deceased person is a Muslim. Included therein, is the determination of any question of Islamic personal law regarding a Muslim, an infant, pradigal, person of unsound mind, on the maintenance or guardianship of a physically or mentally infirm Muslim.

Per UWA, J.S.C. at page 313, paras. B-D:

" it is clear to my mind that the respondent’s claim which borders around a share of the inheritance that has been allegedly withheld from the respondent by the 1st appellant falls within section 277 (supra) . The provision covers dispute over any inheritance which is being allegedly withheld from the heirs. Even the claim of gift raised by the 1st appellant falls within the said provisions. The lower courts therefore had the requisite jurisdiction to have adjudicated on the matter .

On the whole, in the above premises of the law, this appeal is apparently

lacking in merit and ought to be dismissed. It is dismissed and the decision

by the court below that the Sharia Court of Appeal, Kebbi State has the

requisite jurisdiction to adjudicate over the Respondent’s appeal ip respect

of her claim of gift before the trial court under section 277(2) (c) of the

Constitution is hereby affirmed. It is ordered that parties bear their respective costs of

prosecuting the appeal.

IBRAHIM MUSA, JSC: I concur with the reasoning postulated in the draft of the judgment just delivered by my learned brother, the Hon. Justice Mohammed Lawal Garba, JSC, to the conclusive effect that the instant appeal is grossly devoid of merits, thus ought to be dismissed.

Appeal dismissed.

SADIQ, JSC: I have had the opportunity of reading in draft the judgment just delivered by my learned brother **M. L. Garba, JSC.** I agree with his reasoning and conclusions. I too dismissed the appeal for lacking in merit. I abide by the order as to the costs.

HABEEB, JSC: This appeal is against the judgment of the Court of Appeal, Sokoto Judicial Division, delivered on the 18th of January, 2023 in Appeal No CA/S/1 11^s/2018, and which held that the subject matter of the dispute between the parties was in the realm of Islamic Personal Law and over which the Sharia Court of Appeal possessed the requisite jurisdiction to adjudicate and proceeded to affirm the judgment of the Sharia Court of Appeal of Kebbi State sitting in Birnin Kebbi delivered on the 19th of April, 2017 in Suit No SCA/KBS/JG/146/2015.

The question calling for determination in this appeal is whether the learned Justices of the Court of Appeal were right when they *held* that the subject matter of the dispute between the parties was in the realm of Islamic Personal Law and over which the Sharia Court of Appeal possessed the requisite jurisdiction to adjudicate. I have had the privilege of reading before now the lead judgment delivered by my Noble and learned brother, Mohammed Lawal Garba, JSC. His Lordship has admirably considered and resolved the all contentions of the parties in the appeal. I *agree* with the reasoning and abide the conclusion in the lead judgment that the appeal lacks merit and is very deserving of an order of dismissal.

I too hereby find no merit in the appeal. I dismiss the appeal and affirm the judgment of the Court of Appeal, Sokoto Judicial Division, delivered on the 18th of January, 2023 in Appeal No CA/S/1 1 1^s/2018.

JAURO, JSC: I have had the privilege of reading through the judgment delivered by my learned brother, Mohammed Lawal Garba, JSC and I agree with his analysis and erudite reasoning in the judgment.

It is settled that the jurisdiction of court is donated and circumscribed by the Constitution or Statute. See **ONOITA V. TEXACO (NIG.) PLC (2024) LPELR 62416 (SC); AZUBUOGU V. ORANEZI & ORS (2017) LPELR – 42669 (SC); 051 V. ACCORD PARTY & ORS (2016) LPELR 41388 (SC).**

Section 277(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as altered) vests on the Sharia Court of Appeal of a State, in addition to such other jurisdiction as may be conferred upon it by the law of the State, appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law which the court is competent to decide in accordance with the provisions of subsection (2) of the section. Section 277(2) of the Constitution is reproduced below :

"For the purposes of subsection (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 or a

question that depends on 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 that marriage, or regarding family relationship, a foundling or the guardianship 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 the guardianship of a Muslim who is physically or mentally infirm; or (e) 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."

The Claim of the Respondent as stated by her before the trial

Upper Sharia Court, Jega, Kebbi State, was as follows:

"I, Hajiya Rabi is suing Umaru Matankari over the issue that my husband matar uncle called Mal. Bawa gave the gift of a

house to my husband *for* past 40 years or more. The house was in the possession of my husband and we are occupying it. But now after, the death of my husband called Yaron Many, the said Umaru claimed that he has right over this house, This he did not raise this issue prior to the death of my husband. Based on this I sued him to know the reason for his claim. That it was Ibrahim who gave the gift of this house to my husband 40 years ago. The said Ibrahim Tungar Kade gave him the gift of the house and 2 farms, which he inherited from his father."

The claim was clearly in respect of a gift of property given to the Respondent's late husband by his uncle (one Ibrahim Tungar Kade) over 40 years prior to the commencement of the case. It was the Appellant who tried to introduce another dimension to the case by insisting that he was entitled to the house by virtue of inheritance because it belonged to his grandfather (one Malam Isah) and that he was entitled to same through his mother.

While I agree with the Appellant's counsel that the Shariah Court of Appeal lacks jurisdiction to entertain matters of declaration of title to land simpliciter, it is obvious that the Respondent's action is not one of such. The action clearly borders on gift in which the donor was a Muslim. Even if the Appellant's case is to be considered, clearly it is predicated succession/inheritance where the deceased was a Muslim. It is therefore clear that the action before the trial court and which the Sharia Court of Appeal of Kebbi State entertained in its appellate jurisdiction was one bordering on Islamic personal law within the provisions of Section 277(2) of the Constitution. Hence, the court competently assumed jurisdiction over the appeal.

With the above and the fuller reasons in the lead judgment, I too dismiss the appeal and abide by the order *for* the parties to bear their respective costs made in the lead judgment.

