TITLE PAGE

ADMINISTRATION OF CIVIL JUSTICE IN AREA COURTS WITH REFERENCE TO KANO STATE

BY

ILIASU ISA

LL.M. THESIS, 1997

ADMINISTRATION OF CIVIL JUSTICE IN AREA COURTS WITH REFERENCE TO KANO STATE

A Thesis submitted to the Postgraduate School, Ahmadu Bello University, Zarla, In partial fulfillment of the requirements for the Degree of Masters of Laws (LL.M)

Department of : Public Law
Faculty of Law, AB.U., Zarla

DECLARATION

I hereby declare that this project has been produced by me and is a record of my own research work. It has not been presented in any previous application for a higher degree by anybody. All quotations and references are indicated in the "Notes and References" with specific acknowledgments.

.....

ILIASU ISA

Faculty of Law, A.B.U. Zaria.

CERTIFICATION

This thesis entitled:- **"ADMINISTRATION OF CIVIL JUSTICE IN AREA COURTS WITH REFERENCE TO KANO STATE" BY ILIASU ISA** meets the regulations governing the award of the degree of Master of Laws of Ahmadu Bello University, Zaria and is approved for its contribution to knowledge and literary presentation.

B. M Shani 12.8.97
Chairman, Supervisory Committee and Director, Institute of Administration Ahmadu Bello University, Zaria. **Date.**

S. U. D. Keffi 12.8.97
Member, Supervisory Committee. **Date.**

Dr. Yusufu Aboki 12-8-97
Head of Department, Public Law. **Date**

Prof, J. Y. Olayemi 13/8/98
Dean, Postgraduate School. **Date.**

DEDICATION

This **Thesis** is dedicated to:

The **Victims** of oppressions and all forms of injustices being perpetrated by the **Operators** of the Area Courts.

ACKNOWLEDGEMENT

I am grateful to the Almighty God who has given me the power, the talent and the ability to make this thesis a reality. I shall remain grateful to my parents who have shown special interest in my education right from primary school till now. The mention of a few persons does not conceal the fact that I appreciated the contribution of all I held in mind.

I wish to express my profound gratitude to my esteemed supervisors: Alhaji B. M. Shani who despite his commitments found time to read and re-read the manuscript, critise and make suitable suggestions that help to put me on a right pass. Sheikh Danladi Usman Keffi without whose guidance, advice and help the work would not have attained the present level of perfection. I am, also, indebted to various authors listed in the bibliography from whose works I have made references. Thanks a lot.

My special thanks go to Dr. Na'iya Sada, the Dean faculty of law, Dr. Yusuf Aboki, Dr. Bello Fadile, Dr. Tawfiq Ladan, Dr. Ibrahim Ahmed Aliyu, Mallam Sani Idris, Mallam Yahaya Bambale, Mallam Amadu Monkaree Mallam Salihu Kanam, Mallam Usman Lecturers and Mallam Abubakar a student all from the faculty of law, Institute of Administration, Ahmadu Bello University, Zaria, Mallam Ibrahim Aduke, Lecturer from Institude of Education A.B.U. Zaria, Mallam Nasiru Abdulkadir, the Dean faculty of law Bayero University Kano, Mallam Yahuza Ahmed Chief Legal draftman of the Law Reform Commission in the Ministry of Justice, Kano State for the immence educational contribution and moral assistence to the production of this thesis. I am grateful to all of them.

As all research students know that the cost of research works are heavy, mine was borne cheerfully by the Judiciary, Kano State who contributed to satisfy my inquenchable desire for greater knowledge. I am grateful to Judges, Magistrates, Directors, Area Court Inspectors, Registrars, Clerks and all employees of the Judiciary, Kano State and that of other states for their contribution to see the thesis a reality.

Special thanks, also go to my wife, children, brothers, sisters and all the relatives and friends for the encouragements. Special thoughts go to Ihsan Law Firm along Beirut Road, Kano, for some occasions, reserved office in the firm for the study of this thesis.

I wish to express my sincere gratitude and appreciation to the staff of "Law Library" and that of the faculty of Law library all from Institute of Administration, Ahmadu Bello University, Zaria; staff of the library, Judiciary, Kano State; staff of the library faculty of Law, Bayero University, Kano and the staff of the Library, Ministry of Justice, Kano State for the assistance and the opportunity they gave me to use the library.

Finally, I thank the typist in Silver Lens Communications Business Centre, opposite Trade Fair Ground, Zoo Road, Kano State whose Business name must not go unmentioned for the patience in which they neatly typed this thesis

ABSTRACT

"Administration of Civil justice in Area Courts with reference to Kano Stale"; though, from ihe topic, particularities would be concentrated to area courts in Kano state, yet. the thesis has relevance to area courts in the Northern States of' Nigeria because they operate wider a uniform Area Courts Law.

11 THE PURPOSE

The purpose of writing this thesis is as a result of public outcry that civil justice is no where to be found in area courts. These views, usually comes from most of the practising lawyers, law lecturers, elites, litigants, students along with other members of the society (prefer going to magistrate courts rather than resorting to area courts). As one person standing trial before one of the area courts in Kano State complained:

> " Area courts are terrible, the judges apart from lawyers exalt themselves as knowledgeabl, while, they don't know law. They don't allow one the chance to defend his case. They always like calling other side of the litigants to their chambers and houses for one reason or the other. I don't like going to area courts for either litigation or watching proceedings." 1

From observation of the above proceedings in area courts one may understand the genuineness of these statements. The lawyers too equally are to encounter fatal doses of judicial arbitrariness in area courts. These views are enough to have called for the writing of this thesis with a view to unravel the whole situations.

The purpose of administration of civil justice is where a person wanted to recover from another, a sum of money, property, the enforcement of a right

advantage or relief for damages, therefore, he needs to resort to court and lodge the complaint The court clerk or registrar is to state the complaint in writting, forward it to the judge of the court who may order for the registering of the complaint in a cause-book and record-book. The processes of summoning the defendant to appear in court on the hearing or adjourned date all these are procedures towards the administration of civil justice in area courts.

The administration of civil justice by area courts in which their jurisdiction may be invoked, the form of proceedings by establishing the factual situations of the controversy between the parties, the nature, characteristics and effects of the remedies and sanctions that may be awarded by the court. therefore, then perusal are encompassed in this thesis on the administration of ci\ ll iiistice in area courts

Any party to a case who is not satisfied with the conduct of area courts proceedings or with the decision passed, there are procedures that are to be resorted to. such as: by appeal and the procedure of making appeal from the decision of area court to appellate court; by lodging complaint or petition to the inspector for area court; the chief registrar of the High courts or the chief judge on the action to be taken are procedure towards the administration of civil justice

1.2 SCOPE OF RESEARCH

In the proceedings chapter, an attempt should be made to describe and where necessary, analyse the machinery of adminstration of civil justice towards area courts The actual practice and working of area courts is going to be stated in order to convey a functional insight into machnics and dynamics of the judicial process in the area courts. It is therefore, fitting at this stage to collate these into one organic image of area courts system.

The study of this thesis is knitty spreaded into six chapters and being divided into sections. What follows are critical evalution of the systems with descriptions intended to help attune them to the end of justice.

Chapter one being an introduction on the development of area courts before, during and after colonial regime, since in the defunct Northern Region of Nigeria to the present states Government. That was before the colonial regime (Eropean people from Great Britain) came to Nigeria and to its Northern part there were different empires such as that of Bomo and Sokoto. By that time there were no written common laws and it was by custom being rules of behaviour used in setting disputes. Gradually. Islamic law was introduced. Then, with the coming of European people to Nigeria and to Northern region different courts were established and English law were to be applied side by side with the Islamic and customary law. With the attainment of independence in I960 these customary and Islamic laws are only to be applied in settling disputes where they are not inconsistence or repugnant to the rules of English law.

Chapter two is on the Area courts Division being one of-fhe divisions Ibnning the judiciary which is the thud organ of government next to Executive and legislatures. The judiciary is constituted by the High court division. Sharia court of appeal. Magistrates courts. Area courts and any other court established by the House of Assembly of the state. Office of the Director and the offices of the inspectors for Area courts are in the Area courts division; while the chamber of the chief Registrar and that of the chief judge have to be mentioned because they have control over the division. Apart from these, there are other offices and registeries of the Area courts division such as complaint office s e c r e t office. Research office. Appeal registeries. Open registeries. Achieve registeries and

some other offices. All these offices and registeries form part and assists the Area courts'division towards the control of the administration of Justice.

Chapter three crystalised the control of area courts. There are two types of control that is the judicial and administrative. Judicial control arises from the action of appellate court by way of appeal and as well the power of the High

Court to issue perogative orders to a lower court. Administrative control relates to the power and duties of those in authorities such as inspectors for area courts, the chief registrar, the chief judge and other judicial officials having the power of control over area courts. There and then, complaint against area courts would be treated. In this approach, only parties to a case and those who have propriety or pecuniary interest are allowed to make complaint. Modes of making complaint by oral and written would be enlighten, from there, offices of forwarding complaints and the types of complaint to receive a prompt attention would be made clear.

The jurisdiction of area courts is enclosed m chapter four of this thesis. Jurisdiction is the power of a court to try a cause or matter before it. There are five issues of consideration adopted in this topic. The territorial jurisdiction is the limit of the area to which if any cause as matter arose area court is allow to entertain the cause. The jurisdiction on persons distinguishes those who are subject to the jurisdiction of area courts and as well, those who are not. The power of the court extends to the limit of amount of money in case of claim to which area court is allowed to entertain the cause. The venue of trial is the area where the dependant resides or where the cause of action arose to which area court situated in that area according to its jurisdiction is allowed to try the case. The law to be applied is another way of understanding the jurisdiction of area

courts. All these issues of consideration on the jurisdiction of area courts in civil causes or matters, would in their classes, be stated in this chapter.

Some aspect on parties to a civil cause can be traced in chapter five, that is on those who are to be parties, joinder of parties, misjoinder, nonjoinder, appearance of parties and consquences or non-appearance. Also, right of legal representation by Barristers at law in civil casue would be discussed. However, it is not the whole procedures are going to be treated, but only some aspects on parties.

Chapter six carrries conclusions and recommendations on how to align administration of justice in civil causes or matters in area courts. In this chapter, some problems capable or retarding administration of justice would be identified while, some possible solutions, as well, would be tabled.

I 3 METHODOLOGY

The field research in this thesis is going to be conducted on area courts in Kano State of Nigeria. Moreover, other,states area courts system of administration of civil causes would, where possible and practicable, be cited as example. Apart from other provisional amendments, all area courts in the Northern States of Nigeria operates under uniform laws and procedures. Therefore, all discussions would be based on the practical application of relevant substantive laws, I civil procedure rules.2 area courts laws.3 evidence act,4 circulares, judicial decisions mid other customary rules.5

Oral interview woulld be conducted with the inspectors for area courts, judges, court registrars and clerks, lawyers, litigants and as well members of the public in order to have a current ideas towards the administration of civil justice. The thesis would give account of educational papers presented at various workshops, conferences, public lecturers and symposia on area courts so as to make it more current and lively.

ABSTRACT

NOTES AND REFERENCES

Interview with Mu'azu (real name - surname withheld) in Kano in January, 1994. Unless otherwise indicated, all names, incidents and places given or mentioned in this thesis are real. In order to protect sources, however, their surnames, unless, otherwise, considered important for the purpose of the account, will not be given.

S. 1 (2) Area Court (Civil Procedure) Rules, 1971.

S. 1 Area Court Law, cap. 9, Vol. 1 of the laws of die Kano State of Nigeria 1991.

S. 14 (3) The Evidence Act., (Cap. 112). As Amended by Decree No.61ofI991.

S. 20 (1) (a) Area Courts Law. Cap.9, Vol. 1 of the Laws of the Kano State of Nigeria, 1991.

TABLE OF CONTENTS

		PAGES
	Title page	i -ii
	Declaration	iii
	Certification	iv
	Dedication	v
	Acknowledgement	vi
	Abstract	vii
	Table of Contents	xiv
	Table of Cases	xxi
	Table of Statutes	xxvii
	Table of Abbreviations.	xxxix
	CHAPTER ONE	
1.0	*Introduction*	1
1.1	Administration Of Justice	1
1.2	Native Courts During Colonial Regime	15
1.2.1	The Protectorate Courts Ordinance, 1933	18
1.2.2	The Brooke Commission Of Inquiry, 1948	21
1.2.3	Native Courts Law, 1956	23
1.3	Native Courts After Colonial Regime	28
1.3.1	The Study Group On The Judicial Services, 1966	29
1.3.2	Area Courts Edict, 1968	30
1.3.3	Area Courts Reform Committee, 1975	32
1.3.4	Upper Area Courts (Appeals) Rules, 1975	33
	Notes And References	35

CHAPTER TWO

2.0	Organisation Of Area Courts Division,	42
2.1	Area Courts Division	42
2.1.1	The Chief Judge	42
2.1.2	The Chief Registrar	43
2.1.3	Director For Area Courts	44
2.1.4	Inspectors For Area Courts	45
2.1.5	Complaint Officers	45
2.2	Other Related Officers	45
2.2.1	Secret Office	46
2.2.2	Research Office	46
2.2.3	Open Registy	47
2.2.4	Appeal Registry	48
2.2.5	Archieves Registry	49
	Notes And References	51

CHAPTER THREE

3.0	Control Of Area Courts Towards The Administration Of Justice	52
3.1	Judicial Control Of Area Courts	53
3.1.1	Right Of Appeal	53
3.1.2	Power Of Appeal Courts To Inspect Area Courts. Record Of Proceedings.	55

3.1.3	Power Of The Chief Judge To Examine Proceedings.	56
3.1.4	Transfer Of Cases By A High Court Judge.	57
3.1.5	High Courts Perogative Orders	58
3.2	Adiminstrative Control Of Area Courts	58
3.2.1	Public Right Of Access To Court	58
3.2.2	Control By The Chief Judge	59
3.2.3	Control By The Chief Registrar	61
3.2.4	Powers And Functions Of Director And Inspectors For Area Courts	63
3.2.4.1	Power Of Inspection	66
3.2.4.2	Power To Stay Proceedings	70
3.2.4.3	Power To Transfer A Case	73
3.2.4.4	Power To Report A Case	79
3.2.4.5	Power Of Inspector To Report Cases On Special Plea Not To Be Exerciable	84
3.2.5	Transfer Of Staff	92
3.3	Complaints Against Area And Upper Area Courts	93
3.3.1	Persons To Make Complaints	94
3.3.2	The Modes Of Making Complaints	96
3.3.2.1	Oral Complaint	96
3.3.2.2	Written Complaint	99
3.3.3	Offices Of Forwarding Complaints	99

3.3.3.1	Area Courts Division	100
3.3.3.2	Chamber Of The Chief Registrar	101
3.3.3.3	Chamber Of The Chief Judge	102
3.3.3.4	Law Chamber	102
3.3.3.5	Public Complaint Commission	103
3.3.3.6	Emir's Palace	103
3.3.4	Types Of Complaints	104
	Notes And References	108

CHAPTER FOUR

4.0	Jurisdiction Of Area Courts In Civil Cases	116
4.1	Territorial Jurisdiction	119
4.2	Jurisdiction on Person.	120
4..2.1	Persons Subject To Jurisdiction Of Area Courts	120
4.2.1.1	Native Nigerian	120
4.2.1.2	Native African	123
4.2.1.3	Person Who Instituted A Civil Suit	124
4.2.1.4	Person Who Consented To A Civil Suit	125
4.2.1.5	Arm Forces And Law Enforcement Agencies	126
4.2.1.6	Business Names	126
4.2.1.7	Unions	127
4.2.2	Persons Not Subject To The Civil Jurisdiction Of Area Courts	128

4.2.2.1	Non-Native	128
4.2.2.2	Federal, State, Local Government and their Agencies	130
4.2.2.3	Companies	131
4.2.2.4	Trustees	132
4.3	Jurisdiction On Subject Matter	133
4.3.1	Islamic Causes Or Matters	134
4.3.2	Land Causes Or Matters	137
4.3.2.1	Land Covered By A Certificarte Occupancy	141
4.3.2.2	Land Deemed To Be Granted By The Governor	142
4.3.2.3	Land In Urban Area	143
4.3.2.4	Land In Non-Urban Area	144
4.4	Some Aspects On Civil Jurisdiction	145
4.4.1	Power To Try Civil Cases,	145
4.4.2	Venue Of Trial	147
4.4.3	The Law To Be Applied	151
4.4.3.1	Islamic Law	153
4.4.3.2	English Or Common Law	154
4.4.3.3	Customary Laws	157
4.4.3.4	Written Laws	165
4.4.3.5	Substantive And Adjectival Laws.	166
4.5	Consequences Of Jurisdiction.	169
	Notes And References.	171

CHAPTER FIVE

5.0	Some Aspects On Parties To A Civil Cause In Area Courts	179
5.1	Commencement Of Civil Suit	180
5.2	Parties To A Civil Cause Or Matter In Area Court	183
5.2.1	Plaintiff	184
5.2.2	Defendant	185
5.3	Joinder Of Parties	185
5.3.1	Joinder Of Plaintiffs	185
5.3.2	Joinder Of Defendants	189
5.3.3	Non-Joinder	191
5.3.4	Mis-Joinder	192
5.3.5	Who May Apply For Joinder Of Parties.	192
5.3.6	Procedure On Applying For Joinder	193
5.3.7	Effect Of A Joinder	193
5.4	Appearance Of Parties To A Civil Cause In Area Court	194
5.4.1	Appearance Of Plaintiff	195
5.4.2	Non-Appearance Of Plaintiff	195
5.4.3	Non-Appearance Of Defendant	196
5.4.4	Non-Appearance Of Both Parties	197
5.4.5	Setting Aside Judgement Made In Absence Of Parties	197

5.5	Legal Representation To A Party In Area Court	199
	Notes And References	203
	CHAPTER SIX	
6.0	Conclusions And Recommendations,	206
6.1	Conclusions.	206
6.2	Recommendations.	212
6.2.1	Appointment Of Judges	212
6.2.2	Independence Of The Judiciary.	214
6.2.3	Legal System	214
6.2.4	Area Courts Division.	216
6.2.5	Administrative Control	217
6.2.6	Judicial Precedent	219
6.2.7	Shortage Of Stationery	220
6.2.8	Litigation Expenses	224
6.2.9	Delay Of Court Cases.	226
6.2.10	Ministry Of Justice.	228
6.2.11	The State Judicial Services Committee	229
	Note And References	232
	Bibliograhy	234
	Appendix A.	246
	Appendix B,	247

TABLE OF CASES

Abengowe known as U.P.G.A. Lawyer case Z/21m/1964 unreported.

Adesubokan Vs Yinusa (1971) NNLR P.77.

A.G. Lagos state Vs Dosunmu (1989) 3 NWLR (part 111) P. 552.

Agwani Vs Titi Laura and Haruna Aboki UAC/CV/147/91,Jos, plateau state.

Aji Dawakin Kudu Vs Adamu Mallam Lasan Busaye CV/250/165 of 20/10/65 dicided at Emir's Court, Kano state.

Alhaji Baba Bakin Salati Vs Talle Shehu (1986) 1.SCJ P.332

Alhaji Mohammadu Yaro Gwammaja Vs Abdullahi Yahaya and another CV/51/94. Area court, Waje NO 1, kano state; DAC/COM/201/94 of 6/4/94 Area courts division, Judiciary, Kano State.

Alhaji Rabo Vs Hamidu CV/147/87 of 3/3/87, Area court, Kawo kaduna state.

Ali Maikasuwa and others Vs Estate of Late Yusufu Maikasuwa CV/255/95 of 22/10/95, Area court, City No 3, kano state.

Amachree and others Vs Newington (1952) 14 WACA P.97.

Amachree Vs. Kallio (1914) 2 NLR P.108

Amina Brigade Vs Mohammadu Danwanzan

DAC / COM/ 71 / 95 of 5 / 2 / 95 Area Courts division, Judiciary Kano State.

Amodu Tijjani Vs. Secretary of Southern Nigeria (1921) A.C. P. 399 at P. 404 , cited from Rayner, Report of Land Tenure in West Africa, 1898. This case is cited with approval in Sunmonu Vs Diso Raphael (1927) A. C. 881.

Angu Vs Attah (1916) P.C., P.74

Arioli Vs Ilemo (1983)1 S.C.N.L.R., P.1

Asante Vs Gold Coast Drivers Union (1957) 3 WALR P.5

Asiatu Vs Goncallo (1900) 1 N.L.R., P.43

Audu Dandago Vs Shekarau and 5 others, SCA /CV / KN / 22 / 71. decided on 18 / 6 / 71. The information about this case first reached me through Honourable Justice Sunusi Chiroma, High Court of Justice, Kano state.

Auwalu Danbatta and others Vs Estate of late Husaini Bebeji, DAC/COM/504/94, of 9/8/94, Area courts' division,Judiciary Kano

Chief Afoola Atanda and others Vs Masudi Olanrewaju and others (1988) 4 NWLR (PART 89) P.394.

Chief Okia of Okolomade Vs Chief Azere (1926) 6 NCR P.34.

Cootes Vs Ford (1899) 2 Ch, P.93

Craig Vs Craig (1967) NMLR P.52

Dagacin Kasawa Salisu Vs Hasiya Kasawa Res /J/CV/1/94 of 28/1/94, Research Office Area courts' Division, Judiciary, Kano State.

Dandela Wakilin General Haladu Vs Mai-unguwar Lauwali DAC/COM/405/95, Area Courts'Division, Judiciary, Kano State.

Dawodu Vs Danmole (1962) 1 WLR P.1053

Edet Vs Essien (1932) 11 N.L.R. P.47

Ekpe Vs Antia (1940) 10 WACA P.19

Esi Vs Shell B.P. (1959) WNLR P.31

Estate of Zara Dawaki civil case No. 57 of 1940 decided at Alkali's court Kano.

Eyeson Vs Sunusi (1984) 4 S.C. P.115

Fouad Shour Vs Fauziya (1971) 1 NMLR P.299

Gali kanwa Vs Dije Kanwa SCA/CV/KN/259/94 Sharia court of appeal, Kano

Giwa Vs Erinmilekun (1961) 1 All NLR P.294

Graffin Vs Talabi (1948) 12 WACA P.371

Hajja Dawakiji Vs Ismaila Dawakiji DAC/COM/231/93 of 6/5/93, Area courts division, Judiciary, kano state.

Ikpe Vs Ikeriowa 9 NLR P.63

Inyang Vs Ita (1929) 9 NLR P.84

James Vs Morgan (1969) 1 K.B. P.564

Jia Enterprises Ltd Vs British Common Wealth Insurance Co Ltd (1962) 1 NLR P.363

Jibrin Badume Vs Indo Badume DAC/COM/708/94, of 24/11/94, Area courts division, Judiciary, Kano state.

Karimatu Yakubu and Another Vs Alhaji Yakubu Tafida Paiko and Another Appeal No CA/K/80s/85 (Unreported) P.13 per Usman Mohammed Justice of the Federal Court of Appeal.

Katsina Local Authority Vs Alhaji Barmo Makudawa(1969) NNLR P.62.

Kosoko Vs Nakoji (1959) NRNLR P.15.

Kuusu Vs Udom (1990)1 NWLR P.423

Laniyan Vs Issac (1958) NRNLR P.115

Lewis Vs Bankole (1908) 1 NLR P 81

Macfoy Vs UAC (1962) A C P 152

Maja Vs Johnson 13 WACA P.297

Mariyamu Vs Sadiku Ejo (1961) NRNLR P.81

Mrs Emmanuel on behalf of Cherubiam and Seraphim Society Vs Onabanjo 1/64A/1962 (Unreported) an appeal by the Western High Court from the decision of Ibadan No. 1 Court, Grade A.

Odu Vs John Holt and Co (1950)19 NLR P.127

Ojo Vs Abadie (1955) 15 WACA P. 54

Oka Vs Okereke 4 ENLR P.83

Okolie Vs Ibo (1958) NRNLR P.89

Orayemi Vs Okunubi and others (1966) NMLR P.50

Oranye Vs Jibowu 13 WACA p.41

Oreware and Another Vs Abiegba and others (1973) 10 S.C., P.1

Osuagwu Vs Soldier (1959) NRNLR P.39

Owonyin Vs Omotosho (1961) 1 All NLR P.304 at P.309

Peter Uzodima Vs Commissioner of Police (1982) 3 NCLR P.325

R Vs Ilorin Native Authority exparty Aremu (1953) 20 NLR, P.144

Re Adadevor (1951) 13 WACA 304 at P.310

Sarkin Pawa Vs Akangbe (1961) WNLR P.268

Skenconsult (Nig) Ltd and Another Vs Godwin Skendy Ukey (1981) 1 S.C., P.6

Squadron Leader Ode Vs Commissioner of police Benue State and Another unreported (1981) High court of Benue State of Nigeria.

Talabi Vs Adeseye (1972) 1 All NLR (part 2) P.255

Tetlow Vs Oncle Ltd (1920) 2 Ch, P.24

Tsoho Musa Vs Mal'am Ladan DAC/COM/243/95 of 22/5/95 Area courts' division, Judiciary, Kano state.

UAC Vs Umeugo 3 ENLR P.30

Uagu and Others Vs Okochi and Another (1964) All NLR P.36

Ude and Others Vs Agu and others (1961) All NLR P.65

Udofe and Others Vs Aqusisua and others (1973) NMLR P.286

Ugwu Vs Aba and Others 5 ENLR P.63

Umaru Fannami Vs Bukar Sarki (Unreported)

No.CA/3/16s/84 of January 30,1985, Sharia court of-appeal Borno state.

University of Nigeria Nsukka Vs Orazulike Trading Company Ltd (1939) 5 NWLR (part 119) P.19

University of Oxford and Combridge Vs Gill (1899) 1 ch, P.55

Utih Vs Onoyivwe (1991) NWLR (part 166) P.166

Woluchem Vs Wokoma (1974) S.C. P.153) at P.170 - 171

Yarbaba Ya'u Vs Hajiya Binta CV/191/91 of 1991 decided at Area court City No 1, Kano state.

TABLE OF STATUTES

Area court Amendment law, 1989-in the circular reference number DAC/5/CAC/62/1/111/91/2, Area courts Division, Judiciary, Kano State; S17(1) Area courts (Civil Procedure) Rules, 1971

Order 8,Rule1

025 R1 (1)

025 R1 (6)

06 R1, 2 (a)(b)(c)(i) and (ii)

06 R3

06 R4 (1)

06 R4 (1) Proviso

06 R4 (2)

04 R1,2 and 3

02 R2

03 R2

03 R5 (a) (b) and (c)

04 R1

04 R2 (1)

04 R2 (2) and (3)

023 R2

023 R1

08 R1

08 R2

09 R2 (1)

09 R2 (2)

09 R3

09 R1

Area courts law, cap 9, Vol 1. of the laws of the kano state of Nigeria 1991.

Section 2

S 43 (1)

S 45

S 18

S 20 (1) (a)

S 21 (1) (a)

S 20, (1), (c), (3).

S 15 (1), (a), (b), (c).

S 28 (1)

S43 (3)

S 45

S 61

S 53

S 54 (a)

S 54 (b)

S 60

S 43 (1)

S 43 (3)

S 43 (2) (a), (b)

S 44 (2) (a)

S 44 (2) (c)

S 44 (2) (d)

S 47

S 48 (2) (a)

S 48 (2) (b)

S 48 (1) (b)

S 48 (2) (a) (b) and (c) Proviso

S 48 (3)

S 48 (5)

S 50 (1)

S 50 (2)

S 51

S 18

S 14 (1) (2) (3)

S 15, part II, Schedule 1

S 27 (a), (b)

S 15 (1), (a) (b)

S 14 (2)

S 15 (1) (c)

S 15 (1) (a) (b) (c)

S 21 (b)

S 21 (c)

S 4 (2)

S 21 (2) Proviso

S 39 (1) (2)

S 4 (2)

S 21 (1) (c) Proviso

S 20 (1) (a) (b) (c), (2), (3)

S 21 (1) (a) (b) (c), (2)

S 26 (1)

S 26 (2)

S 15 (1) (c)

S 6 (1) (a) (b)

S 28

S 50 (1) (2)

Civil Service (Re-organisation) Act, 1990

Commission of enquiry (cap 37 of Nigeria, 1948

Companies and Allied Matters Decree, 1990

S 656 (1)

S 624 (2)

S 37

S 38

S 650, Paragraph 18,

S 673 (1)

S 673 (2)

S 679 (1)

Constitution of the Federal Republic of Nigeria, 1979

S 33 (6) (c)

S 220 (1)

S 221 (1) (2)

S 223 (2) (a)

S 33 (1), (3)

S 33 (4), (a)

S 33 (9)

S 33 (10)

S 192 (1) (a - d), (2)

S 161 (1) (a - d), (2), (3)

S 160 (1), (c)

S 33 (1)

S 2 (1)

S 2 (2)

S 6(3), (5), (a - h)

S 242 (2), (a)

paragraph D, part II, Third schedule

S 33 (4) (a), (b)

S 1 (3)

Criminal procedure Act

S 73

S 74

Criminal procedure Code Law

S 285 (1)

S 285 (2)

S 253 (1)

High Court (Civil procedure) Rules, 1988

Order II Rule 2

0 11 R 3

0 11 R 1

0 II R 38

High Court Law, Cap 57, Vol.2 of the Laws of the Kano State of Nigeria.

1991:

S 10

S 76

S 77

S 34 (1)

S 34 (1), (2)

Interpretation Act, 1963 defining the words "Native Tribunal". The act applied throughout the country as Federal Law.

Interpretation Act, 1981 defining the word "Native". It is a Federal law which applied throughout the country.

Interpretation Law (Western Regions Laws, 1959, cap 44) of Oyo, Ogun , Ondo, Osun and Delta States of Nigeria, Section 3.

Judicial Service Commission Law, cap 67, Vol 2 of the laws of the Kano State of Nigeria, 1991, schedule (Section 3 (2)) of Section 1 (a).

Judiciary (Administrative Machinery) Law, cap 60, Vol 2 of the Laws of the Kano State of Nigeria, 1991.

Kano State Law Reform Commision Edict, 1989, Edict No 6 of 1992

S 1

S 3 (2)

S 4 (1)

S 4 (2)

S 4 (3)

S 11 (a), (b), (c), (d)

S 11 (2)

S 8 (1)

S 8 (2, (a), (b), (c), (d)

S 8 (2) (e), (f)

Kano State Law Review Commission Edict, 1989, Edict No 18 of 1990, S 1

Land Use Act, 1978

S 34

S 39

S 1

S 39

S 34

S 3

S 5

S 6

S 36

S 41

Laws of the Eastern Region of Nigeria, Part XVII, No 17 of 1960.

Laws of the Federation of Nigeria and Lagos, Cap 105

Laws of the Northern Region of Nigeria, No 4 of 1954

S 110

S 109

S 111

S 112

S 113 (1), (2)

Laws of the Western Region of Nigeria,

cap 68, Part xix

cap 31, S 2

Local Government Law, Cap 89, vol 2 of the Laws of the Kano State of Nigeria, 1991, S 4.

Matrimonial Causes Rules, 1983

O 1 R 4

Moslem Court of Appeal Law, 1956

S 4 (1)

S 14 (1)

S 15

S 18 (1)

S 24 (1), (2), (3)

Native Courts Law, 1933

S 3 (1)

S 4

S 5

S 10

S 25 (1)

S 25 (2)

S 27 (1)

S 30

S 42

S 25 (1) (a)

Native Courts Law, 1956

S 4

S 15 (1), (2), (3)

S 19 (1)

S 19 (2)

S 19 (3)

S 20 (1) (a) (b)

S 20 (2)

S 26. (a) (b)

S 54, 55 (1), (2), (3), (4)

S 61

S 62

S 2

Nigeria Constitution Order *in* council 1954, (S.I. 1954 No. 1146)

Nigeria Constitution Order *in* council 1960, (S.I. 1960 No. 1652)

revised Edition (Laws of the Kano State of Nigeria) 1981

S 1

S 3 (1)

S 3 (2)

S 5 (1) (a - e)

S 5 (2)

Penal Law, cap 134, vol 3 of the Lawof the Kano State of Nigeria,

1991:

S 19 (1) (2)

S 11 (a - d)

S 19 (1)

S 19 (2)

S 19 (3)

Supreme Court Ordinance No 6 of 1914

S 20

The Evidence Act (cap 112) As Amended by Decree No 61 of 1991

S 1 (2) (a), (b), (c), (3), (4)

S 53, 54

S 136

S 53

S 14 (3) Proviso

S 14 (1)

S 14 (3)

S 59

S 2 (1)

S 2 (2) (a), (b), (c)

S 1 (4) (c)

S 1 (4) (c)

S 5 (a)

The proclamation No 8 of 1990 which declared the protectorate of northern Nigeria; later amended by the proclamation no. 14 of 1902.

The revised Edition (Laws of the Federation of Nigeria) Decree, 1990

United Nation Basic Principles on the Independence of the Judiciary

S 10

Upper Area Courts (Appeals) Rules, 1975, First Schedule notice of Appeal und order 2, Rule (3)

0 4, R (b)

0 9

TABLE OF ABBREVIATIONS

AC	Appeal Cases
CA	Court of Appeal
ChD	Chencery Division
CLO	Civil Liberty Organisation
CPC	Civil Procedure Code
CPC	Criminal Procedure Code
CV	Civil Cases
DAC/COM	Director for Area Courts/Complaint
ENLR	Eastern Nigeria Law Report
Ibid	Ibidem, in the same place
ILR	Islamic Law Report
J	Jos
JSC	Justice of the Supreme Court of Nigeria
K	Kano
KB	Kings Bench
NCLR	Nigeria Criminal Law Report
NLR	Nigeria Law Report
NMLR	Nigeria Monthly Law Report .
NNLR	Northern Nigeria Law Report
NRNLR	Northern Region Nigerian Law Report
NWLR	Nigeria Weekly Law Report
Op cit	In the work cited
P	Page
PC	Penal Code Law
PC	Privy Council
Q.B.D.	Queens Bench Division

Res	Research Office
S	Section
SC	Supreme Court
SCA	Sharia Court of Appeal
SCNLR	Supreme Court of Nigeria Law Report
SCJ	Supreme Court Judgement
Supra	As cited above
V	Versus or against
WACA	West Africa Court of Appeal
WALR	West African Law Report
WNLR	Western Nigeria Law Report
WLR	Weekly Law Report
Z	Zaria

CHAPTER ONE

1.0 INTRODUCTION.

1.1 ADMINISTRATION OF JUSTICE

Administration of justice in the area courts is becoming a fatal does of irritating grief, thereby, inflaming the vehemence of public outcries. As long as the administration is allowed to persist, it is not only the litigants that suffer, but, as well the sanctity of the law would be poluted and the credibility of the judicial machinery before area courts will continue to be dilapideted.

Administration of justice ensure that people are treated equally before the law and that the law operates to give full and unconditional justice to all. That justice is not a commodity for sale to which only the highest bidder can afford. The story in the area courts is different. For restriction of justice to the highest bidder is must certain to lead society to destruction.

No area court can survive unless the arm of justice is allowed to reign supreme. If justice is so vital for the stability, peace and overall progress of area courts, why has it been so illusive? the crisis is the result of the unequal legal justice to which we seem apparently immuned and eluded the people by underling trend in dishonestly and enrichment at all cost.

Looking into the graft and corruption that have invaded the area courts which in concrete terms has lent a weighty hand to the phenomenon of public outcry. The sad thing though is that while there seems to be so much awareness of the problem facing our area courts: so little seems to be have been done to make the system provide what it is set to do justice.

There is consensus among users and close observers of the area court system that the abuse of justice despensed in these court is highly vexatious. According to one legal pratitioner, "The area courts are synoymous with injustice to an ordinary Nigerian".[1] In view of the Chief Judge of Jigawa State, "The problems of abuse of judicial power is much more in the area courts than in any other court or judicial tribunal."[2] Furthermore a former Solicitor General and, presently, judge of the High court Kano State reports that "cases of high - handedness before these courts are becoming rampant.[3] In view of one of the observers of proceedings in an Area court has this to say:

> *"I was once before one of the Area courts in Kano State for watching proceedings. The judge did not sit in time untill after 2.00 p.m. Then the court sit and all cases were adjourned without conducting proceedings. The following day the judge not in court, it was at late hours we heard that the judge was at the headquarter The*

next day schools are on leave the judge went to a secondary school in one Local Government Kano to bring his children. The subsequent day the judge was in the court and litigants are busy going in and out in his chamber. It means members of the public would be unaware for the court's session."[4]

Judges should not regard lawyers as enemies of the court, but, they are "Friends of the court"; "Ministers in the temple of justice",[5] and are "Learned Friends" whose duties towards the court is to assist in the administration of justice. A lawyer should always display a dignified and respectful attitude towards judge presiding, not for the sake of his person, but for the maintenance of respect for and confidence in the judicial office. That is why they always avoids the exchange of banter personlities, argument or controversy with the court. Their objections, requests and observations are characterised by candour and fairness. Reproachfully, as one lawyer vetoed the adventure grudgingly as follows:

"Generally,area court judges misconcieved the position of private legal practitioners in causes or matters before them. They looks at lawyers as enemes of the courts; whereas lawyers are ministers in the temple of justice who always ensure justice is being obtained either in

farvour of their clients or of that of the opposite party. For the fact that the area courts have made up their minds on the position of lawyers in cases before them; they never give lawyers the chances to ensure that justice is being obtained. Area cours should be manned by qualified legal practitioners. Thereby, Judicial service committee should, henceforth, ceased from appointing unqualified people".[6]

A judge should avoid anything calculated to gain or having appearanc of going special personal consideration or favour in a case. It is both the right and duty of the lawyer fully and properly to present his clients case and to insist on an opportunity to do so . He should vigorously present all proper arguments against any ruling he deems erroneous and should see to it that a complete and accurate case record is made. In this regard he should not be deterred by any fear of judicial displeasure whatever may be the interest and ill-feeling existing in a course or matter should not be allowed to influence the conduct and demeonour toward the administration of justice. Judges are bound by oath, while, a lawyer who accept a case shall be deemed to have given a solemn undertaking that he would conduct the case proveded fee is paid. A full accounts of these public outcries on the administration of justice in areacourts would be beyound the scope of this thesis, but, the readers attention is directed to this quotation.

"Condidly, experience have shown that before accepting causes or matters area courts judges have vested interest in the outcome. Mere seeing a lawyer appearing in a case the grudges made by some judges are inflamed by vehemence of harshness and hatred thereby frustrating all efforts.To them entailing legal services is a sheer waste of clients time, energy and money. largelly, the problems of area court judge is one or all of the following (I) lack of suffient knowledge. (ii) Ignorance of the duty of a lawyer, (iii) Abject poverty (iv) Outright greediness, Hence 80% of cases in Kano State are being dispose off in area courts.Therefore the body that appoint judges should strictly stipulate qualification that only graduate in common or Islamic law are the only persons to be appointed as area court judges."7

Some people are calling for scrapping of area courts on the ground that their sources reginate from traditional institution. Transitionally, prior to the creation of native courts traditional rules were the judges and staffs adjudicating cases through customary sanction. It continued up to the era of giving birth to native courts to which some learned people were made judges and staffs to assist the same traditional rulers. They ceased to have hand in the judiciary with the establishment of area courts in 1968. The institutions is hardly amenable to changes, varification and modification introduce by common law, unaccommodating to norms of social changes and having administrative

bureaucracy. In a projection of macabre feeling toward, the survival of area courts, the following opinion is hereby captioned stonily:

> *" The area courts should be scrapped on the ground that they originated from traditional institution. Formerly, native court judges and staffs were appointed by the traditional rulers. Therefore, the system of administrative bureaucracy is the same and undetachable . All powers of area courts should go to that of magistrate courts."8*

It is a trite law that all parties having ,a cause or matter before area courts shall be given adequate time and fereility to state their cases. However, where the defendant denied the allegation, the parties shall be allowed to called their witnesses for the prove or disprove of the allegation. Where a witness after being summoned by the court or called by a party, refused to come to court without any reasonable cause, but, only wrote a letter stating his relationship with the party and even urging the court to strick out the case, the court shall not act upon the letter.[9]

Also, a witness who did not give evidence before a trial court, the appeal court is without authority to call the said or any other witness to give evidence; to hear or inquire from them would amount to hearing a fresh witness. The

appeal court have no power to call fresh witness who have not been called by the trial court of first instance.10 Similarly, it is wrong in law for a court to admit statement in evidence of a mere letter written by a witness who refued to come to court without any reasonable cause. This is what happened in the case of ALHAJI WADA YANKATAKO VS FATSUMA GWAMAJA"[11] The facts of this case was first heard, inquired into and finally determined by the upper Area Court No. 6 Kano State. It is a petition seeking for the dissolition of a marriage between a wife being the plaintiff and her husband. She contended that her husband neglected her without food, did not care about her, he used to incite co-wives against her., and being forced to marry him. The husband denied these assertion and asked the court to beg her to be potient and go back to the matrimonial home. She refused to come back to his house.

The trial court on its own motion adjourned the matter to enable the parties reach on amicable settlement. But on the resumed date, the court was told by the wife that there was no settement and she insisted that she did not like the appellant. Further adjounment was granted, hoping that there would be a reconciliation, but, all came to naught. When it appeared to the court that all attempts of reconcilation has fail, the trial court decided to invite the respondent's quardian inorder to know from him how the marriage engagements was administered. This is because the plaintiff is saying that she was force to marry defendant.

The witness did not show up, but, wrote a letter in which he admitted being the gardian of the plaintiff and is the one who administer the engagement. He suggested that the matter be struck out and an order be made that the plaintiff should go back to her matrimonial home. The trial court relying on the letter, struck out the case and ordered the plaintiff to go back to her husband.

She appealed to Sharia Court of Appeal. The witness who did not attend the trial court, but only wrote a letter and another fresh witness were summoned. The issue that she was not consulted before conducting the marriage was first heard by the appeal court from these fresh witness. The first witness said he did not consult her, while the second witness said he consult her, but she kept silent. Based on the evidence of these two witnesses, the Sharia Court of Appeal declared the marriage null and void.

Dissatisfied with the decision of Sharia Court of Appeal, the husband appeal to Federal Court of Appeal. That one of the ground of appeal was that it is wrong for the appeal court to accept evidence of the plaintiff through a letter submitted to the court to testify and confirm his relation with the plaintiff regarding her marriage; for a witness cannot appoint a representative to continue with the provisions of section 28 (2) (a) of the Area courts law. The second

ground of appeal it stated that it was wrong for the Sharia Court of Appeal to admit fresh witness who have not been called by the lawer court.

Held by the Federal Court of Appeal that it is well established principle of law that he who assert must prove. Therefore, statement made by disputing parties is not evidence before the court. It is wrong for the trial court to act on the statement made by witness in a letter containing relationship and telling the court to strick out the case and the plaintiff be made to go back to her matrimonial home The sharia court of Appeal have no power to hear fresh witness who did not testify before the trial courts.[12] Therefore, it behaved as if it was a court of first instance and not an appellate court when it has no power to do so in the circumstance of this case. Since the decision of Sharia Court of Appeal and that of Upper Area Court are solely based on the evidence of those two witnesses who were not called before the court; thereby, the judgement of Sharia Court of Appeal and that of Upper Area Court cannot be allowed to stand and are, hereby set aside. A retrial is ordered before another Upper Area court differently constituted.

In another development in order to minimise complaints, petitions and appeals, area court judges should always accertain the fact of controversy between the litigants before applying the principle of law. It is only by making inquiry to access the fact in issue which will warrant the proper application of

law. That is to say, when two people are on a dispute over a property to which no material witnesses were produced by either party, the court shall see to it on to whom should first swear under the principle of Islamice law of oath. This principle has been enunciated in the case of IBRAHIM GAYA Vs ABDU ALI.[13] The plaintiff filed on action before the Area court Ajingi of Kano State claiming for the respossession of 8 barn, a pen and a small piece of land from Abdu Ali, the respondent.

In his explaination before the court, the plaintiff said that he had given these properties on loan to the defendent about 20 years ago. The defendant who is a material brother of the plaintiff argued that the properties in question were given to him as a gift and he had taken possession more than 25 years ago.

The plaintiff called three witnesses who testified that they know the detendant to be in possession of these properties, but, they could not say whether the properties where given to the defendant as a gift or on loan. The defendant told the court that he had no witness to testify that the properties were given to him as a gift by the plaintiff. The plaintiff was first ask to take oath with Holy Quran text under Islamic law that the properties in dispute were given to the defendant as a loan, he declined to take oath. The court turned to the defendant and ask him to take oath that the three properties in his possession were given to him on laon, similarly, he declined to take oath . Then, the Area court Ajingi,

Kano in its judgement directed the properties to be given back to the plaintiff, since he had claimed for repossession of the same.

The defendant appealed to Upper Area Court of Appeal, Kano. It reviewed the evidences adduced . It then found quite rightly, that the defendant being the person in possession of the disputed properties should be offered to take oath before the plaintiff. It stated that since the plaintiff had failed to prove his case through the witnesses who gave evidence in support of his claim, the defendant should be called upon to take oath, as well, the plaintiff too, decline to swear. The Upper Area Court declared the ownership of the properties in farvour of the defendant who is originally in possession of the properties.

From there the appelant appealed to the Sharia Court of Appeal and in a considered judgement it affirmed the decision of the upper area court, thereby, it declared ownership of the disputed properties in favour of the respondent who is the defendant at Area court .

Then, further appeal was made to Federal Court of Appeal in it sitting at Kaduna State. It entirely agreed with the decision of Sharia Court of Appeal in which it affirmed the judgement of the Upper Area Court. It stated the position of the Islamic law in which in this kind of situation where the person who is to swear has decline to do so, the status quo in respect of the property would be

maintained since the responded is the person in possesion of the properties shall hold on to it.[14]

After considering the fact as reproduced and the proceedure of applying oath, the Area Court Ajingi Kano Misconceived as to who shall first took oath with Holy Quran. It is a principle of Islamic law that when neither of the parties to a case before a court brings evidence to substantiate the allegation or the evidence adduced are not material, the parties shall be made to take oath with Hol Quran.[15] it is not only knowing the principle that matters, but, to whom, time and place it shall be administered . Instead of the court to first give oath to the respondent who is in possession of the properties it make the plaintiff being the appellent to take oath which is a total mis application of the principle. Area court judges shall always be conscious in applying principles to facts in issue otherwise miscarriage of justice are likely to be envisaged.

Repeated more emphatically, complaints against proceeding of area courts usually evaporates where previous judgement be brought again for the second suit. Once a court makes final decision by drawing judgement on a case thereby assigning right and liability no party shall bring the same case before the same or any other court except on appeal.[16] The principle of law intends among other things to prevent different courts trying a case already tried by another court based on the same parties, issue and subject matter. But has this principle

of law entitled "Res Judicata" been observed in the case of HANSATU GARBA VS AUDU GARBA?[17] It is where the plaintiff instituted a civil cause before Area Court Kurna-Asabe, Kano seeking by way of inheristence the petition of a house and a plot of land

Their mother called Binta leaving two male and a female heirs being the only legal heirs. After two years of the final determination of the case; even the judge who tried the case was transferred and another judge was posted to the court; the same party among the two male heirs instituted a fresh case for the petition of the same house they inherited.[18] In the cause of hearing the case, the other female heirs who instituted a case the other time on the same members of heirs, issue and subject matter through judgement of the court got a plot of land was included in this new case. Thereby, the court petitioned the house among the three heirs including the female heir.

One of the parties lodged a complaint at the Area Court Division, Kano on the ground of their sister being included in the share of their house which in the prior case she got her own share of a plot of land. The parties were advised to go and make appeal in view of the fact that judgement has been delivered in the subsquent case.

In this case various proceedural errors and misconception of facts could be detected. In the subsquent case the judge should have make inquiry on the

righful heirs in the legal sense, are only the two male children because in the first case their sister have got a plot of land being her share while the house was given to the two male children.

Thereby, the second case shall strickly, only be between the two male children for the house to be pertitioned. Those holding legal title to the house shall be ascertained inorder to prevent from getting doubt share.

To include their sister in the inheritence of the house amount to deciding a case already decided by another to court.

At this stage the parties are at liberty to go to Sharia Court of Appeal and make appeal or for the Area Court Division to report the case to appeal court.

1.2 NATIVE COURTS DURING COLONIAL REGIME

For a comprehensive administration of civil justice in area courts and in order to pave forward sugestions on the reshufflement of the present area courts; it would be worth starting with the development of native courts from the then Northern Region of Nigeria. All that is intended to be stated here is an outline of the pre-existing administration of native courts during the British Colonial Regime that formed the features of the present area courts.

Before the year 1800, there were various empires in the provinces of Northern Region of Nigeria among them were Borno and Sokoto. By that time, elders settling disputes by way of customs and enforcing it by the community were usually resorted to. Since then, Islamic religion itself as is well known penetrated the Northern Region of Nigeria through trans-saharan trading links of the ancient time and the middle ages. Islamic law appears to take firm roots and to suppliment whatever native customs that existed. By that time there were Arabic schools, Government correspondences, courts proceedings, treasury books and so on were written in Arabic. As a result, the need for a proper administration of civil justice became necessary.

With the coming of Europeans to Nigeria, the initial contact was through "commerce" the first point was the coastal areas of the Sourthern Nigeria because they were easily accessible through the atlantic areas experically where they got most of what they wanted - slaves, and raw materials for some of their finshed products.

In the case of the interior that is the Northern Nigeria, the Europeans and particulaly the British had much difficultuy getting access. They had hoped since the early 18th Century to use River Niger and how it flows as well as other obstacles imposed by geography, the deadly climate and certain hostility of the natives discourage exploration of which ships could penetrate only a short distance from the coast. 19.

Initial attempts to penetrate the interior were made only towards the end of the 18th century when the River Niger attracted the special attention of the British African Association of Scientists formed in 1988. 20 After that, three trips were made aimed at discovering the pattern of flow as well as the extent of the River Niger. 21 There were other expenditions which succeeded in getting into the interior of the North up to Kano and Sokoto. 22 Finally, another discovery solved the mystery of River Niger. 23.

The discovery was followed by the activities of manchants and other expeditions sponsored by both the British Government and private enterpreneurs. Then some order were brought into the conflicting commericial interests of the colonial powers which was followed by the establishment of the United Africa Company and later on renamed Royal Niger Company with full rights of administration, with police, judges and prisons, the power to raise taxes and, in fact, to carry out all the functions of a government.

When the Europeans defeated and colonized the defunct Northern Region of Nigeria from 1902 to 1903, there were in existence two Islamic Empires namely Borno and Sokoto. They brought the two together under the name Northern Nigeria. They found the Emir's court filled with learned and pious jurists whose decisions were always based on authorities from Islamic law books. The proceedings of the courts were always recorded in Arabic language.

Despite the political wronglings and discords amongst the Emirs which were brought by the weakness of the central government of Sokoto, the administration of sharia continued unabated and the peity of the judges unaffected that is why it became evident for the colonial masters that any attempt to middle with Islamic law will precipate religious upraisings whose ends would not be known.[24]

However, at the apex of the administrative set up was the Governor of Northern Nigeria. In the provinces there were residents who were, the Chief Executive and were mainly British Officers in the Provinces, there were divisions headed by Divisional Officers. The contonment areas were Government Reservation Areas which can be found in provinces. Then, the British Colonial Regime embark on the establishment of different courts and promulgates laws and orders.

Looking that the customary law was not acceptable to the British and other foreign people, the litigants and other members of the public seldom obtained justice in the customary courts; therefore, in 1849 the British Government appointed a consuls essentially for the purpose of regulating disputes. The consuls established courts known as equity courts which dealt with trading disputes between indigenous and British traders. The consular courts had jurisdiction over natives and subject of other Europeans who consented to the jurisdiction. Furthermore, the court had jurisdiction over persons, chiefs or government officials of which he was a subject or under whose protection he had agreed or consented to.

1.2.1 THE PROTECTORATE COURTS ORDINANCE, 1933

The year 1933 had been preceeded with many legislations and restructuring of the native courts and administrative changes. The provincial

courts system were extremily critical on the grounds that access by the natives to an independent judiciary were uncustomary. The native courts were been controlled by the political officers. The growing numbers of Barristers, who were denied audience by statute both in native and provincial courts. The ordinance,[25] brought about changes in the provincial courts ordinance and established High Courts and Magistrate Courts in each of the protectorate Region.

A Resident has the power to establish within his province such native court as he shall think fit,[26] A resident may from time to time appoint members of a native court.[27] He has the power to dismiss or suspend any member of a native court who shall appears to have abused his power or to be unworthy or incapable of exercising the same justly or for other sufficient reason,[28] There shall be four grades of Native courts namely grade A.B.C. and D. The native court shall apply the native law and custom prevailing in the area of jurisdiction, the provision of any ordinance, rules or orders made under the Native Authority Ordinance 1933,[29] The Governor in council may with the approval of the secretary of state by order direct that any person or classes of persons apart from those persons subject to the jurisdiction of a native court.

On the control of a native courts, a provision was made allowing the Resident and District Officers to have right of access to native courts both of first

instance and on appeal in his province or Division,[30] He may in his own motion or on the application of any person concerned investigate a complaint concerning native courts and after that may either review the preceeding, transfer the case to another native court or report the case to appeal court.

However, the administrative officers have no power to reverse a native court decision by review. This was stated in the supreme Court ruling in **CHIEF OKIA OF OKOLOMODE VS CHIEF AZERE,**[31] it was on a declaration of a title to land. the land already been awarded to okolomode in the year 1925 as contained in the native court judgement which eight years later a district officer quashed giving title to Azere. In the Supreme Court proceedings Azare was pleading that the case had already been decided: therefore, district officers have no power of reviewing the decision of the court. He can only do that before judgment, but, not after. Held by the Supreme Court that administrative Officer is empowered to suspend a decision, he cannot set it aside and give judgement for the other party, but he can only order a retrial or transfer.

The resident may annul any order made or sentence passed by District Officer.[32] Any party aggrieved by the decision of a native court may within 30 days appeal to a native court of appeal.[33] Moreover, an appeal shall lie to the West African Court of Appeal from the order or decision of the High Court given on appeal from a Native court of first instance.[34] The Magistrates and judges of

High court have the right to inspect records of books of such Native Court relative to the appeal. [35]

The Resident or a District Officer has the power to make such order or pass such sentence as the Native Court could itself have made and as well he must give the person adversely affected a right of fair hearing.[36] Therefore,such sentence or order of the Native Court could be appealed as such.

1.2.2 THE BROOKE COMMISSION OF ENQUIRY, 1948

In the year 1948, the Government of Nigeria in view of the fact that the law to be administered by individual Courts was not clearly defined in statutes, the system of appeal and review needed reexamination; the working of the Native Courts system called for positive suggestions and reshufflement and ordinances [37] were to be replaced. it set up four commisions of inquiry.

The Government appointed a commission of enquiry for the Northern, Eastern and Western provinces and for the colony of Lagos.[38] For the North,the commission consisted of Brooke J. as sole commissioner, while those of the East and the West and the Colony consist of four man commissions headed by the same Brooke J. The terms of reference of the commissions were similar inter

alia: to investigate the working of the Native Courts system and review the position with regard to the law to be administered.

The commission abolishes advisory powers and powers of control exercised by District Officers. The officers were left with the power of control only in respect of grade "C" and "D" Courts. The District Officers lost their powers over the Emirs Court and grade "A" and "B" Courts. These categories of Courts were left under the supervising of the resident, but, had no power to temper with the judgement. The only power he could exercise if he is dissatisfied with the judgement was to transfer the case to another court for retrial. The commission abolishes the appellate jurisdiction of the District Officers and the Magistrate Courts over the Native Courts.

The commission recommended the taking away of the power of the High Court to review cases which were not brought before it on appeal. It recommends the restriction of the use of the High Court orders in respect of proceedings in native courts. It recommended that the new ordinance should apply through out Nigeria and rejected the suggestion that each set of provinces should have its own ordinance. They recommended that the use of the term "customary" Courts and Customary law to replace "Native" which was accepted in Eastern and Western region , but, not in the Northern Region.[39]

The commission recommended the establishment of moslem Court of Appeal from Emir's Court and the Chief Alkali's Court. It brought about the promulgation of Native Court law.[40] It made subject to Native Court anybody who had previously instituted proceedings in a Native Courts.[41]

The law to be administered in a particular case should be that applicable to a cause as an alternative to that prevailing in the area of jurisdiction. Soon after the publication of the reports, it proved impossible to enact the ordinance as recommended.[42] This is because the Federation of Nigeria was established to consist of Northern, Eastern and Western Regions, and the Federal Territory of Lagos.[43] Therefore, under its constitutional provisions, Native or Customary Courts became a residual matter and could only be legislated upon by the Regional Legislatures.

.2.3 NATIVE COURTS LAW, 1956

A Resident may establish within his province a Native Court, but, subject to the confirmation of a Governor.[44] He has the power to appoint members of the Native Courts.[45] The judges of a Native Courts shall consist of a judge of the Court and the Court may sit with or without assessors.

The Native Court shall have jurisdiction within such territorial limits as may be defined by its warrant, shall within such limits have jurisdiction over all persons who permanently reside within the area of jurisdiction of the Court. It has jurisdiction over persons whose general mode of life is that of the general native community. The Native Court shall have jurisdiction to all persons who reside within the area of a native Courts as tenants or employees of any person holding such land. These persons or classes of persons whether of African or non-African descent whom the Governor in council may with the approval of the secretary of state subject to the jurisdiction of a native court. The jurisdiction of a native court extends to persons whether of African or non-african descent who at any time institute proceedings in a native courts. The native court have jurisdiction to all natives of Nigeria and all Native foreigners who consented to the exercise of the jurisdiction of the native court. 46

Moreover, unlike the native court law, 1933, the native court law, 1956 established another grades of native court namely; Grade "A", "A Limited", "B", "C", and "D". Criminal cases shall be tried and determined by a native court which has juridiction in which the offence was commited; or which the defendant is ordinarily residing even though the offence has been committed outside such area. 47

All civil causes other than land causes shall be tried and determined by a native court which has jusidiction over the area in which the defendant is ordinarily resident: or in which the defendant was at the time when the cause of action arose. 48 All land causes shall be tried and determined by a native court of competent jurisdiction. If there is no such native court of competent juridiction all land causes shall be tried by the High court or magistrate Court 49

The native court shall administer native law and custom prevailing in the area of jurisdiction of the court or binding between the parties, provided it is not repugnant to natural justice equity and good conscience. It shall apply the provisions of any written law, of all rules, orders, byelaws made by native authority.. 50 A native court may impose a fine or imprisonment or both as authorised by native law and custom provided it does not involve mutilation or torture.. 51

Legal practioners have no right of audience before a native court or a reviewing officer exercising his powers of review. However, a native court may permit the husband, wife, guardian, servant,master or any inmate of the household of the party who will give a satisfactory proof of authority 52

Native courts adviser, Resident, District officer whose power may be compared to the present inspector for area courts shall at all times have acess to

all native courts within the region and to all records and proceedings. They may on their own motion or their absolute discretion, on the application of any person concerned review any of the proceedings whether civil or criminal [53]

Right of appeal is allowed to any person aggrieved by a decision or order of a native court grade "B", "C" and "D" may appeal to a native court of appeal [54]

But, on a decision or order of Grade "A" or Grade A limited native courts, to native court of appeal in which the subject matter of the cause or matter is not value of one hundred pounds or upwards (ie two hundred Naira or upwards) or in which a fine exceeding twenty five pounds (ie fifity Naira) or a term of imprisonment exceeding six months may appeal to Moslem Court of Appeal in cases governed by moslem law or the High Court in all other cases. [55]

There were Alkali's court and Emir's Court and as well the Moslem Court of appeal. The Alkali's court have jurisdiction on Islamic law and as well the Emir's court have jurisdiction on Islamic and customary law. The Alkali's court shall consist of an Alkali who is learned in Islamic law, and he sits with assessors who advice him on Islamic authorities. The Emir's court was presided by the Emir and he sat with assessors.

The moslem court of Appeal shall consist of a judge (i.e Alkali) and assesssors. The panel of Alkalai (i.e Judges) shall composed of such Alkalai of

native courts and the panel of assessors shall composed of such eminent persons of the moslem faith learned in the principles of modern law.[56]

The Moslem court of Appeal shall have jurisidiction to hear and determine appeals in respect of Regional matters in cases governed by moslem, any decision of a Grade "A" native court, Grade A" limited native court, and a native court of appeal in which the subject matter of the cause or matter is of value of one hundred pounds (i.e two hundred Naira or upwards) or in which the sentence of a fine exceeding one hundred Naira (ie two hundred Naira) or of a term of imprisonment exceeding six months.[57]

The Moslem court of Appeal in the exercise of the jurisdiction as regards both substantive law, practice and procedure shall administer, observe and enforce the observance of the priniciple and provision of moslem law of maliki school as interpreted at the place where the case was first tried, the native courts law, 1956, any law affecting the native law, any subsidiary legislation, the principle of natural justice, equity and good conscience. The court shall not impose any punishment which involves mutilation or torture or is repugnant to natural justice or humanity.[58]

A person aggrieved by a decision of the Moslem Court of Appeal may appeal against such decision to High Court.[59] No Legal practitioners may

represent any party before the moslem court of Appeal. However, the husband, wife, guardian, servant or any inmate of the household, or relative of the deceased in the administration of the estate of the deceased may be permitted to represent the aggrieved party. 60

1.3 NATIVE COURT AFTER COLONIAL REGIME

After a sequence scrutinizing of the native courts in Northern Nigeria during the colonial regime; native courts after colonial regime would be examined. That was the era Nigeria became an independent country within the commonweath on October 1, 1960. Nigeria was then a federation consisting of the Federal Territory of Lagos and three regions namely Eastern, Western and Northern Nigeria.

Regional Parliament was empowered to legislate for the region. Each regional lagislature had, in general, exclusive legislative powers with respect to matters outside the list. Enactments made by Federal legislature were called "ACTS", and those made by regional legislature were "LAWS". By virtue of declaration of Ordinance of 1961 and which were still in force as Federal statutes were to be called "ACTS.61

The courts systems remained basically the same. The Judicial Committee of the privy council were still the highest court for Nigeria. There was the Federal Supreme Court consisting of the chief justice of the Federation of Nigeria and federal justices. Lagos still had a court and magistrate court and so

with each regions in Nigeria. Each regions in Eastern and Western Nigeria had a customary courts: while, the Northern Region had a native court.

In 1960, a court of resolution was established for the purpose of adjucating disputes between the High court of the region and the Sharia court of appeal. A Judicial Service Commission was established for each region.

A new constitution of the federation came into operation on October 1, 1963. The judicial committee of a privy council ceased to be a court of Ngeria. The Federal Supreme Court was abolished and a new court known as the Supreme Court of Nigeria was established. A customary courts system were retained. In Northern Nigerian native courts were established. That was the position of judiciary revolution untill January, 15, 1966 when a military revolution ocuurred in the country.

1.3.1 THE STUDY GROUP ON THE JUDICIAL SERVICES, 1966.

When the military regime took over Government in Nigeria, General Aguiyi Ironsi became the Head of State. 63 The constitution of the Federal Republic of Nigeria was aborgated.

He set up a committee to look into the administration of justice in the Northern Region of Nigeria. The committee was known as the Study Group on the Judicial Services. The committee was made up of the eminent English judges under the chairmanship of the then justice Mohammadu Bello.

One of the terms of references was to look into whether or not the native courts system would continue to exist. In the recommendation of the study group which was submitted, it stated that it would not be possible to abolish the native courts. This is because ninety five (95%)of the cases are handled by the native courts. In 1964 alone, they handled 223,263 cases; while the twelve magistrate courts then existing handled 1961 cases only. For the magistrate courts to handled native cases at least 1861 magistrates had to be empolyed.

The comittee added further that the majority of cases handled in the native courts were civil cases of which the determination is under Islamic law. Moreover, the practice and procedure in the magistrate courts were too technical and complicated to be understood by the rural communities in the Northern Region of Nigeria. The recommendation was approved, however, native courts were taken over from native authority. [64]

1.3.2 AREA COURTS' EDICT, 1968

In furtherance to the development of various native courts law and the different committees, yet, another reform was set up towards the administration of justice. The Government enacted another law styled 'Area Courts Edict' which is now called "LAW' and is contained in the laws of the Kano State of Nigeria. [65]

The name of the courts was changed from native court to area court and from provincial court to upper Area Court. [66] All area courts were placed under the control of the chief Judge of the respective Northern State. [67] A provision was made on the appointment of inspectors for judicial and administrative control of area courts which is unlike before where native courts were been controlled by political officers. [68]

Area court have jurisdiction on civil and criminal cases. [69] An area court shall in civil cause or matter administer the customary law prevailing in the area of jurisdiction of the court or binding between the parties. [70] The particular customary law which the parties agreed or intended. [71] They were other Islamic, cases on Isamic personal law, inheritence, custody of children and other Islamic law where the parties before it where moslems. Moreover, an area court is to apply the provisions of common law subject to local lagislation . [72]

The Area courts shall have jurisdiction on any tribe or tribes indigeneous to some part of Africa and the descendants of any such person. It has jurisdiction over any person one of whose parents were members of any tribe or, tribes indigeneous to some part of Africa and descendants of any such person. Any person on a cause or matter in which he consents to the exercie of the jurisdiction of area courts. [73]

No legal practitioner may appear to act for or to assist any party in any civil proceedings before an area court. However, with the coming into force of the 1979 Constitution of the Federal Republic of Nigeria it allows legal practitioners to appear and practice law in any court established in Nigeria.[74]

1.3.3 AREA COURT REFORM COMMITTEE, 1975

In the process of reshufflement of area courts in the Northern States of Nigeria, another area court reform committee was set up. That was during the third military revolution which occurred in Nigeria headed by Murtala Muhammed as a head of the state.[75] The committee was made with Judges and Khadis and Dr. Aliyu Abubakar the then commissioner for Education, Bauchi State as Chairman.

The terms of reference was to look into the problems of area courts in the Northern States of Nigeria; whether or not area courts could be continued with and recommend solutions. The committee went on to say that it was necessary to continue with area courts because they were located at the grassroot level of the society. So, they were by far more easily accessible and comparativelly simple, speedy and inexpensive. The varnacular language was local and personal and were also from the Local community. Moreover, apart from larspes and abuses, the courts were dispensing justice reasonably and satisfactorily.

The committee stated the statistics of cases handled by the area courts in the Northern states for the year 1975 were four hundred and fifty four thousand, six hundred and ten (454,610) as against twenty seven thousand, nine hundred and seventy seven cases (27,977) handled by magistrates and High courts. This shows that ninety four percent (94%) of the cases are handle by the area courts.There were seven hundred and sixty nine (769) area court judges, fifty 50 magistrates, nineteen (19) judges of the High courts, twenty three (23) Sharia court of appeal judges.The committeee recommended that all appeals on Islamic law should be transferred from High Court to Sharia court of appeal. The federal government accepted these recommendation. [76]

13.4. UPPER AREA COURTS (APPEALS) RULES, 1975.

In the year 1975, Upper Area Court (Appeals) Rules was enacted. [77] The rules applys to appeals against decisions of any area courts in criminal and civil cases.[78] Initiation of appeal shall be commenced by the person interested to make appeal or by his authorized representative giving the appeal court oral notice or written notice of appeal. Oral notice of appeal shall be reduced in writting by the registrar clerk of the appeal court and be signed or thumb printed by the appellant or his authorised representative. Then, the registrar or court clerk have to countersigned the notice. Notice of appeal in writting shall be in a prescribed farm naming the registrar to whom the notice is to be given;

the name of the court appelled against, the date of decision, case number; names of parties, grounds of appeal and a space to be signed by the appellant or his authorised representative. 79

Where notice of appeal is received by the court from which the appeal is brough the court shall within one month of reciept of the notice of appeal send a copy of the record of the proceedings to the upper area court of appeal. 80 Upon reciept of the copy of proceeding of the lower court, the upper area court of appeal shall fix a date of hearing of the case to be heard. At the end of the appeal session, every orders made by the court shall be notified in writting to the area court from which the appeal is brought. 81

The apeal rules was made to guide judges deciding cases on appeals, to direct court staffs, lawyers and as well to enlighten litigants and members of the public towards the administration of justice on appeals from area court to upper area court of appeal.

CHAPTER ONE

NOTE AND REFERENCES

1 Usman Y. "Administration of justice in the Area Court" (hereafter called "Justice in the Area Court") paper delivered during the law week of the Nigeria Bar Association(N.B.A), Kaduna Branch, 17 March, 1988. p.20

2 Abdullahi T. "The Jurisdiction of magistrate and Area Courts and Abuse of judicial process" (hereafter called "Abuse of Judicial process") paper presented at the seminar organised by the Nigeria Bar Association, Kano Branch for magistrates and Area Court Judges on the Administration of justice in the lower court, August 5-6-1992. p.8

3 Aboki A. "The problems and constraints of Admiistration of justice in the lower courts." paper presented to the seminar organised by the Nigerian Bar Association, Kano Branch, for magistrates and Area courts, Judges. on the 'Administration of justice in the lower courts, August, 5-6, 1992, p.25.

4 Donatus A. Danjuma, Silver Lens Communication, Business Centre No.19 Zoo Road, Opposite Trade Fair Ground, Kano State.

5. R. Vs O. Connell (1984) L.R. Ir page 261. at p.312; Rondel Vs Worsely (1966) 3 All E.R. Page 657 at p. 665.

6 Dalhatu Mohammed and Co. Private legal practitioner, No. 53, Ibrahim Taiwo Road, Kano State.

7. Murtala Musa, Private legal practitioner, No.52, Ibrahim Taiwo Road, Kano State.

8. Abba Bello, Former Instpector for Area Courts, Judiciary, Kano State.

9. S. 91 (1) (6) The Evidence Act, (cap" 112) As Amended By Decree No. 61 of 1991. Any statement made by a person in a document and tending to establish that fact shall on production of the original document be admissible as evidence provided the maker of the statement is called as a witness. However, if it is not reasonably practicable to secure the attendance of a witness if he is dead, bodily or mental unfitness, is far away beyound the seas or for another reasonable course the original document may be admissible.

10 S 59 (2) Area Courts law. The section empowers appeal court to hear such additional evidence as it consider necessary for the disposal of the case Its does not warrant hearing, fresh evidence not been called by the trial court.

11 (1990) I.L.R. page 44; case No. CA/KT/955/86, Court of Appeal, Kaduna Division.

12 Supra

13 (1990) I.L.R. Page 76; case No.CA/K/975/88, Court of Appeal Kaduna Division.

14 Dasuki commentary on Muhtasal Khalil. Chapter 4, at page 232.

15 Supra

16 In Alase and other Vs Olori Ilu and Others (1965) N.M.L.R. page 66,the supreme court held that before the doctorine of Res-judicata can operate it must be shown that the parties issue and subject matter were the same in the previous case as those in the action in which it is raised.

17 DAC/COM/138/97 of 20/3/97; CV/171/75 of 7/3/95 Area court, Kurna Asabe, Kano State.

18 CV/24/97/ of 26/2/95 Area court Kurna Asabe, Kano State

19 Abdul-malik Bappa Mahmud, "A Brief History of Sharia in the Defunct Northern Nigeria." page 6

20 The effort of the association to set the tone for the exploration of the River Niger in Nigeria was started by a Birtishman called Major Houghton in 1791. Major Houghton was said to have followed the cause of the Gambia into the interior and eventuhlly he was robbed of all his goods by a party of merchants, being left to wonder in the desert where he died of starvation.

21 After Major Houghton, mango park made three trips inorder to discover River Niger, but he died in the cause of the third trip at New Bussa a town not far way from Zungeru in Northern Nigeria.

22 It was only in 1820 that Captain Clapperton succeeded in getting into the interior of the North, but, could not determine the precise source of River Niger. He died in April, 1827.

23 Lander Brothers, continued from where clapperton stopped. It was indeed the lander Brothers who embarking from town in 1830, discovered River Niger in Northern Nigeria: Dantsoho Mohammed "Zungeru. The forgotten Capital of Northern Nigeria," page 28.

24 Abdul-malik Bappa Mahmud," A Brief History of Sharia in the Defunct Northern Nigeria," page 2

25 Native court law, 1933

26 S3 (1) Ibid

27 S4 Ibid

28 S.5 ibid

29 S.10 ibid

30 S. 25 (1) Ibid

31 (1926) 6 N.L.R. page 34

32 S 25 (2) Native Courts Law 1933

33 S 27 (1) Ibid

34 S 30 Ibid

35 S 42 Ibid

36 S 25 (1) (a) Ibid

37 Native Courts Ordinance, 1933

38 Commission of Enguiry Ordinance (cap. 37, Laws of Nigeria, 1948)

39 The Northern Region still maintain "Native Law" and "Custom"

40 Native court law , 1956

41 This was not a specific recommendation of the Brooke Report. It was introduced by the Government to correct those who used the native court to get redress. But if the proceedings were against them they allege that they are not subject to the jurisdiction of a native courts. (Northern Region of Nigeria House of Assembly Debates, March, 1956, p.309.)

42 The recommendation are too numerous and diverse to list.

43 Nigerian (constitution order - in council, was enacted in October, 1 1954.

44 S 3 (1) Native courts law, 1956

45 S 4 Ibid

46 S 15 (1) (2) (3) Ibid

47 S 19 (1) Ibid

48 S 19 (2) Ibid

49 S 19 (3) Ibid

50 S 20 (1) (a) (b) Ibid

51 S 20 (2) Ibid

52 S 26 (a) (b) Ibid

53 S 54,55 (1) (2) (3), (4) Ibid

54 S 61 Ibid

55 S 62 Ibid

56 S 4 (1) Moslem Courts of Appeal law, 1956

57 S 14 (1) Ibid

58 S 15 Ibid

59 S 18 (1) Ibid

60 S 24 (1) (2) (3) Ibid.

61 Nigeria (constitution) Order in council 1954 (S.L. 1954 No. 1146); Nigeria (constitution) Order in council 1960 (S.L.1960 No. 1652).

62 On January, 17, 1966.

63 The Governor of Northern, Eastern, Weastern and Midwesthern Region of Nigeria.

64 Abdul Malik Bappa Mahmud, "A Brief History of Sharia in the Defunct Northern Nigeria," P.31.

65 Area courts law, cap. 9 Vol. 1 of the laws of the Kano State of Nigeria, 1991.

66 S2 Ibid

67 S 43 (1) Ibid

68 S 45 Ibid

69 S 18 Ibid

70 S 20 (1) (a) Ibid

71 S 21 (1) (a), Ibid

72 S 20 (1) (c), (3) Ibid

73 S 15 (1) (a) (b) (c) Ibid

74 No legal practitioner may appear to act or assist any party before the court under S 28 (1) Area Courts Law, Ibid; S 19 (1) (2) Sharia Court of Appeal Law; but S33 (6) (c) of the constitution of the Federal Republic of Nigeria, 1979 allow legal representation of right to be heard in a court.

75 In July, 29, 1975.

76 The report was submitted to the Head of the Federal Military Government of Nigeria, Lt General Olushegun Obasanjo on 27/3/1976 The recommendation was accepted by the Federal Military Government in its white paper published in 1976.

77 Order 1, Rule 1, Upper area court (Appeals) Rule, 1975

78 Order 1, Rule2 Ibid

79 First Schedule, Notice of Appeal, Order 2 Rule 1 (3) Uppear Area court (Appeals) Rules, 1975

80 Order 4 Rule (b) Upper Area Court (Appeals) Rules, 1975

81 Order 9 Ibid.

CHAPTER TWO

2.0 ORGANISATION OF AREA COURTS' DIVISION

2.1 AREA COURTS' DIVISION.

Area Courts' Division is the central body taward the administration of justice in area courts. The division is in the High Court premises situated at Audu Bako secretariat, Kano state. The division is headed by a Director for area courts. While, Inspectors, Complaint officers and other officers Assist the Director with the day to day administration of justice in area courts. It is the duty of the division to cause investigation on a complaint against any area courts'staff or on the proceeding of a case; with a view to order for appropriate action to be taken on a complaint. It co-ordinate the activities of area courts and its staff and inform the chief Registrar and the Chief Judge for a further directives.

Therefore, it would be desirable to state the hierarchy of administration of the area courts division right from the office of the Chief Judge to the office of the Chief Registrar, then other related offices.

2.1.1 THE CHIEF JUDGE

The Chief Judge is the head of all the High courts in the state. 1 He is the head of the judiciary in the state comprising the High courts, Sharia court of

Appeal, Magistrate courts, Area courts and other court with subordinate jurisdiction and established by the House of Assemble of the state2 Also, he is the head of the Judicial services committee.3 While, the Grand-Khadi is the head of the Sharia court of Appeal.4

Apart from role of sitting in a court and decide cases as a High Court Judge; the Chief Judge is vested with the duties of general supervision of administration of justice in area courts.5

The perogative power of the Chief Judge in the administration of civil justice may be exercise by him either on his own motion or on the application of any party to a cause or matter in area court. The power is entrusted to the Chief Registrar by the chief judge to advice him on the administration of civil justice in area courts.

2.1.2. THE CHIEF REGISTRAR

The Chief Registrar is the head of administration in the High Courts, Magistrate Courts and Area Courts. Therefore, the Director for area Courts and inspectors assist the Chief Registrar towards the administration of justice in area courts.

However, the functions of the Chief Registrar on the control of area courts towards the administration of justice would be made clear in the subsequent chapter.

2.1.3 DIRECTOR FOR AREA COURTS

The Director for Area Courts is the head of the Area courts division; while, Inspectors, Complaint Officers and Other Officers assist the director towards the administration of justice in area courts.

In the defunct Northern Nigeria, by then, native courts were headed by a "Commissioner for native and customary courts" for the whole Northern Nigeria. 6 With the creation of state in Nigeria by the federal Government in 1967 each northern state has its own area courts division. However, through nomenclature, the designation, Commissioner for native and customary courts was changed for a "Chief Inspector for area courts"; for other Inspectors, the name " Inspector for area courts" remained unchanged. This took effect with the enactment and coming into force of the Area Courts Edict of Northern States of Nigeria in 1968. Moreover, in 1990, the name Chief Inspector for area courts was, again, changed to a "Director for area courts" 7 But, Inspectors are still being referred as Inpectors for area courts.

2.1.4 INSPECTORS FOR AREA COURTS.

The appointment of Inspectors for area courts is provided by the Area courts law. 8 Inspectors are Officers working under the Director for area courts. The duties of Inspector for area courts are that of investigation of complaint, inspection of courts activities and other duties towards the administration of justice. The Inspectors' offices are in the area courts division. However, some state like Kaduna, Bauchi and so on have decentralised Inspectors. This is, as a result, with the creation of judicial divisions in those states. It is where some local Governments are combined as one judicial division.

2.1.5 COMPLAINT OFFICERS.

The Area courts law envisages no provisions for the appointment of complaint officers. Most of them are court registrars posted to the area courts division. They are to assist the Director for area courts and Inspectors with writing of complaints and other related duties. For example, when some one is to make a complaint against the conduct of proceeding as in respect of any courts staff or a party to a case; it is the duty of the complaint officer to listen to the complainant and reduced it in writing. Where the complaint has no bases, he gives a proper advice on how to dispose of the case.

2.2. OTHER RELATED OFFICES.

Apart from the area courts division comprising of the directors, inspectors

and complaint offices, there are other related offices of the division and they are as follows:

2.2.1 SECRET OFFICE

The secret office is one of the related offices of the area courts division. The office is part of the Director's office. The Director usually selects from his staff some one who is to be his confidential secretary and is posted to the secret office.

The confidential secretary must be reliable as some secret matters towards the administration of justice may be discussed with him. The person has to be responsible and a promising, as confidential matters would be entrusted in him.

All written complaints, correspondences and files towards the administration of justice are deposited with the confidential secretary for onward minuting to the director, or any appropriate officer. Appointments to see the director are usually made with the confidential secretary.

2.2.2 RESEARCH OFFICE

Research office is one of the offices of area courts division in the judiciary. This research office is not attached to the Department for Research planning and statistics. The research officers most of them are retired area courts

judges and are engaged on contract basis. This does not prevent the current serving judges to be posted to the research office.

The purpose of the research office is for consultation on islamic legal matters. It is meant to assist by offering Islamic advice to area courts judges, 9 inspectors and other members of staff. Complicated Islamic cases are referred to them for gaidances. Legal practioners,litigants and members of the public are allowed to consult them. Presently, all consultation are free of legal charges. Though the office is temporarily closed because the contract to which the present serving judges are employed has not been renewed; while, those who are currently on full employment have not been posted.

2.2.3 OPEN REGISTRY

Open Registry is one of the area courts division's offices where open files of staff of area courts are kept which is unlike the secret office where confidential files are kept. Application made by staff is put in his open file. The registrar incharge of the open registry minuted on the application and direct the file to the director for area courts or to any appropriate office. But, there are other application of which the registrar has to send to the Head-Registrar of administration who would pass the application to the officers in-charge.

It is at the open registry that all letters of complaints against area courts are given numbers, dated and file-jacketed. There is a registrar-incharge of keeping files in a proper order. The despatch-clerk takes care of incoming and outgoing letters. While other clerks assist the registrar with other official duties in the open registry.

2.2.4 APPEAL REGISTRY

Appeal Registries are another offices of the area courts division. In Kano state, there are four zonal appeal registries. The appeal registries are respectivelly situated at upper Area court Bompai Gwarzo, Danbatta, Rano and Gaya local Governmet areas of kano state. The central appeal registry is at the area courts division in the High court premises at Audu Bako Secretariat in Kano.

It is the duty of each appeal zonal registrar to make list of all appeal cases from the area courts in that zone and send them to central appeal registry. Also, it is the duty of appeal registrar at the centre to inform the Director for area courts or any inspector in-charge of appeals about such appeal list. Then, based on the direction of the chief registrar, the Director for area courts would give direction on the names of the Upper area courts 'Judges who are to sit and hear the appeal. The Director would mention the date of sitting. The said upper area court where all the area courts' cases are appealed against would be the venue for the appeal

session. For example, if all the cases are from Rano appeal zone then the upper area court Rano is the venue where the hearing of appeal cases is going to take place. For the purpose of that appeal session, the upper Area court Rano becomes upper area courts of appeal on adhoc basis.

Therefore, in order to ensure a proper administration of justice, all appeals from area courts within that appeal zone are to be instituted at the zonal appeal registry. The appeal registrar is always available, ready and willing to give guidance on making appeal. He,also, assists on how to get a record of proceedings from the area court where the appeal emanated from and file same for appeal at appeal-headquarter.

2.2.5 ARCHIEVES REGISTRY

The Archieve Registry is situated at City area court No 2, Kano. And it is under the administrative control of Area courts' division. The archieve registry has a large store where old record books of proceedings of disposed off cases from various area courts are kept. The record of proceedings are arranged in shelves according to the chronological order for easy reference.

Record of proceedings of criminal and civil cases that had been disposed off for many years can be found at the archieve registry. There are old record of

proceedings kept at the time of the then Emir of Kano courts 10 and Alkalis'court. 11 In addition, there are record of proceedings of the present area courts. 12 The purpose of storing old records of proceedings in archieve registry is to ensure their safety and preserve them against loss or causing discrepancies in such records.It is also, meant to assist litigants with a copy of proceedings for making appeal against any judgement of area court.

CHAPTER TWO

NOTES AND REFERENCE

1. S.10 (1) High Court Law, Cap 57, Vol. 2 of the laws of the Kano state of Nigeria, 1991.
2. S.2 Judiciary (Administrative Machinery) Law, Cap 66, Vol.2, Ibid.
3. Shedule (Section 3,(2)) of section 1 (a) of the Judicial Service Commision law, , Cap 67, Vol.2 Ibid.
4. S.7 Sharia Court of Appeal Law, Cap 134, Vol.3 Ibid
5. S.43 (3) Area Courts Law, Cap 9, Vol.1, Ibid.
6. Native Courts Law,1956
7. Civil Service (Re-organisation) Act.1990
8. S.45 Area Courts Law, Cap 9, Vol.1 of the Laws of the Kano state of Nigeria,1991.
9. Dagacin Kasawa Salisu Vs Hasiya Kasawa No RES/J/CV/1/ 1994 of 28/1/94.Research office Area court division, judiciary, kano State.
10. Ajuji Dawakin kudu Vs Adamu Mallam Lasam Busaye civil case No 250/65 of 20/10/65 decided at Emir's court, Kano.
11. Estate of Zara Dawaki civil case No 57 of 1940 decided at Alkalis court Kano.
12. Yarbaba Ya'u Vs Hajiya Binta Civil case No CV/191/91 of 1991 decided at City Area court, No.1, kano

CHAPTER THREE

3.0 CONTROL OF AREA COURTS TOWARDS THE ADMINISTRATION OF JUSTICE

In the previous chapter two, organisation of area courts division and other related offices towards the administration of justice has,in its class,been stated. However, this chapter is on the control of area courts. In view of the fluidity of procedure before them, area courts have a range of civil and criminal procedure that must to be considered alarming. The Upper area courts, for instance, have criminal jurisdiction over all crimes other then capital offences, yet, they are not bound to observe some statutory rules of procedure and evidence in the exercise of their jurisdiction 1. They are bound to do "Substantial Justice" 2. in the cases and to the people that came before them.

Therefore, there should be a devised to safeguard against miscarriage of justice. That is by the control, a decision of area court may be revised or modified. It shows that area court's decision is subject to control by other authorities. It is another way so that justice is not only done but be witnessed by the public to have been done. For that reasons, the control of area courts would be examined on the judicial and admininistrative basis.

3.1 JUDICIAL CONTROL OF AREA COURTS

Judicial control of area courts may be term as another legal device provided by the law and as well through an inherent judicial power for the administration of justice. Judicial control of area courts may be exercised by way of appeal to appellate court. It is,also, exerciable by the High court. In addition, the cheif judge has the power to examined records of proceedings of area courts and give further directives. These legal devises of control of area courts, may be brought at any stage of the area court proceedings either at the beginning, in the middle or even after judgement. Thereby, mare analysis of these operations of judicial control of area courts towards the administration of justice would be examined thus.

3.1.1 RIGHT OF APPEAL

After the final judigement of the area court in a case, thereby, assigning right to one party and liablility to another, then, any one who is affected or likely to be affected has the right to go to appeal court and instituted appeal against the devision of that area court.

An appeal consist in taking of a case from a subordinate court to a superior court with a view to doing or causing to be done that which the subordinate court should have done, but, has not done.3 For example, A and B each is claiming ownership of a donkey before an area court. At the end of the

proceedings, judgement was delivered in farvour of B and the donkey was given to him as the rightful owner. Thereby, A has the right to go to appeal court and institute appeal against the devision of that area court, which decided their case. In other wards, the object of appeal is to have the decision of the inferior court revised or modified by the superior court which is another way of control of area courts towards the administration of justice.

As a general rule,an appeal may be filed against a decision of an area court by a "party aggrieved" by the court's decision.4 A party aggrieved need not to necessarily be the person who instituted the case in the lower court so long it would be shown to have a commalty of interest, and grievance and a legitimate interest in the persuit of the appeal.5

Any right of appeal, but not appeal with leave, 6 exerciable at the instance of a party thereto to the Federal court of appeal from the decision of a Sharia court of appeal shall be as of right, but, a party to a case claiming to have an interest in the matter can appeal with leave of the sharia court of appeal.7.

Appeals lie from decision of area courts to upper area courts of appeal and then, to sharia court of appeal. As well, appeal is allowed from the decision of upper area court of appeal to Sharia court of appeal. All these are on civil cases

involving Islamic law. In all other cases involving general law appeal goes to High court from the decision of Area court, Upper area court and that of Upper area court of appeal.9

In the exercise of their respective appellate powers any of the appellate court may order the quashing of the decision of the trial court. They may,also, vary such decision or substitute it with a fresh decision within the limit of the jurisdiction of the trial court. This is an indication that the decision of area court is not final and is subject to be quashed, modified or varied which is another aspect of judicial control of area courts towards the administration of justice.

Appeal ensures greater uniformity in the application of the rules of law by the area courts. It makes the area courts more careful and alert in deciding cases. It reduces the chances of miscarriage of justice. An appeal is a continuation of trial in the lower court for the control of administration of justice.

3.1.2 POWER OF APPEAL COURTS TO INSPECT AREA COURTS' RECORD OF PROCEEDINGS

Where a person is not satisfy with an order or decision of an area court, he may go to any of the respective appeal court and lodge appeal. The appeal registrar should register the appeal, send notice of appeal along with the request

for the certified copy of proceedings of the area court concerned. The said area court appealled against its decision has to send the copy of proceedings of the case to the appeal court.

The appeal court to which the appeal is brought shall have the power to inspect the copy of proceedings of that area court relative to the appeal.10 Any court exercising appellate jurisdiction in civil cause or matter shall after rehearing the whole case reverse, vary or confirm the decision of the court from which the appeal was made. It has the power to quash the proceedings of the lower court and order such case to be retried before the court of first instance or before any court of competent jurisdiction.

3.1.3. POWER OF THE CHIEF JUDGE TO EXAMINE PROCEEDINGS

The chief judge has the power on his own motion call for and examine the record of any proceedings in any criminal cause or matter before any court. In so doing, the chief judge should take into consideration for the purpose of satisfying himself as to correctness, legality or propriety for any finding, sentence or orders recorded or passed and as to the regularity of the proceedings of the court.11 For this purpose the chief judge after the exercise of his powers may refer the record of proceedings to the court of appeal. The appeal court shall treat such reference

as if it were an appeal before it from the lower court at the instance of such party or person the chief judge shall designate.12

There is no such provision empowering the chief judge to examine record of civil proceedings with a view to make appeal. But, it may be compered by the way that all area courts shall be subject to the general supervision of chief judge.13 This implies that the chief judge has the power to examine civil record of proceedings with a view to report a case to appeal court.

3.1.4. TRANSFER OF CASES BY A HIGH COURT JUDGE

A High court judge of the Northern States is empowered to transfer cases before him to any area court having the judisdiction. The power is exerciable at any time and stage of the proceedings. There is no party to a case or any person who has interest may appeal from the order of transfer issued by the High court.14 This may be illustrated where a husband and wife being moslems, married under Islamic law, are on a dispute over the custody of a child and the matter is before the High court. Therefore, the matter was transfered by the High court to any area court having the jurisdiction to try the case. No appeal shall be allowed from an order made by the High Court for the transfer of the case. Another way open to the party aggrieved by the transfer is to allow the area court to which the case was transferred to continue with the case. Another alternative is

for the aggrieved party to lodge complaint at the Area courts division for the transfer of the case to another area court.

3.1.5 HIGH COURTS' PEROGATIVE ORDERS

The High Court has the power to issue the perogative order of mandamus,15 certiorari,16 prohibition,17 and habeas corpus,18. However, the Northern State of Nigeria implemented legislation limiting the High courts over the issue of order of mandamus, prohibition and certiorari. The power of the High court to issue habeas corpus is not restricted.19 All these does not prevent any person who alleges that any of the foundamental human rights has been, is being or likely to be contravened in any state in relation to him may apply to High court for redress. 20

3.2 ADMINISTRATIVE CONTROL OF AREA COURTS

As it was stated from the begining of this chapter that there are two types of control of area court; the judicial and the administrative; as the judicial control of area courts had already been discussed; the following constitute administrative control of area courts.

3.2.1. PUBLIC RIGHT OF ACCESS TO COURT

When all the parties appear in a court,the proceedings of the case shall be in a public.21 This proves that members of the public have the right of access in

any court of law as well as the court room would contain inorder to hear the proceedings of the court. This right of fair hearing in the court, is another step that justice must not only be seen by the members of the public, but, be witnessed that it has been done. It is another aim of judicial control of area courts towards the administration of justice.

However, in any cause or matter a court may order that no member of the public shall have access to or be remain to hear the proceedings of the court for reason of public safety, public morality and the welfare of persons who have not attained the age of 18 years. Moreover, the court may allow the parties to a case thereto and their legal practitioners to remain in the court.22.

3.2.2. CONTROL BY THE CHIEF JUDGE

All area and appear area courts in the state shall be subject to the general supervision of the chief judge which is within the administrative control of area court.23 The power of the supervisory role of the chief judge may be exercised by it either on his own motion or on the application of any party to a cause or matter in an area court.24.

Where a complaint was brought to the chief judge on either the area court have no jurisdiction to try the case or it may have the jurisdiction, but, for the

purpose of securing a fair and impartial trial and it is expedient in the interest of justice generally, the Chief judge may direct that such cause or matter be tried by the upper area court.25.

The sections vested the chief judge with the judicial power to order another upper area court to try the case where in another area court a fair and impartial trial could not be secured. As, well in the interest of justice generally, he may order another area court to stay proceedings of a cause or matter and direct another upper area court to try the case.

The chief judge being the head of the judiciary may establish area court as he shall think fit. In so doing, he may direct that area court be established in one Local Government and as well in some areas. He may, also, upgrade an area court to upper area court depending upon the number of cases in the area.

It is the supervisory role of the chief judge to see to it that judges and courts' staffs are posted to various court and no court would be placed on shortage of staff. Anything to do with promotion of staff from one grade level of salary to another is under the supervisory role of the chief judge who after the recommendation was made to him by the Director for area court to the chief

registrar would pass same to judicial service committee for approval or disapproval of the promotion.

It is within his supervisory role that erring judges and staff are disciplined accordingly. For example, a judge or any staff who demand or receives money, property or any interest which has a likelihood of farvouring one party against another in a case that disciplinary action is to be appropriately taken against him by the chief judge.

All the criminal and civil cases registered, disposed off and pending in area courts, upper area courts and upper area court of appeal are periodically inspected by the inspectors for area courts and reports are written to that effect. Similarly, inspectors do inspects cashbooks, revenue reciepts and anything dealing with court's revenue. Reports of inspection of area courts comes to the chief judge who would supervise the whole reports and make comment on the appropriate action to be taken.

3.2.3. CONTROL BY THE CHIEF REGISTRAR

The chief registrer is the administrative head of the High courts, magistrate courts and area courts. All staff matters, litigation processes,

properties of the judiciary, transportation, staffs salary other claims and so on are all under the administrative control of the judiciary.

It is the duty of the chief registrar to advice the chief judge on the establishment, jurisdiction and the general administration of area courts. He is to advice the chief judge on the jurisdiction of area courts that is whether it would cover one or more local governments and either to increase or reduce the territorial jurisdiction of area courts. 26 Most of the report writting on the inspection of area courts activities, investigation of complaints and other general administration comes to the office of the chief registrar. Complaint on any staff or on the conduct of proceedings of area courts may be lodged in the office of the chief registrar who may order for investigation, report be written and forwarded to him for appropriate action.

The chief registrar has all the powers of inspectors for area courts to stay proceedings of area courts, report a case to appeal court, transfer a case from one area court to another and so on. 27. Moverover, the chief registrar should have such other functions as may from time to time be conferred upon him by the chief judge 28.

Notably, among the administrative control of the chief registrar is that, a person wishing to institute a civil cause or matter against another for claiming of a certain amount of money or debt or for valuation of property has to pay a certain percentage of court fees.29 But, if that person cannot afford to pay the court fees which is requirement before his case to be registered and the subquent continuation of the court's proceedings his rights may be frustrated for the delay of registering the case. He may apply to the chief registrar of the High court either orally or in writting for a waiver of the court fees. The chief registrar may at any time in any class or classes of cases should not attract court fees. 30

3.7.4 POWERS AND FUNCTIONS OF DIRECTOR AND INSPECTORS FOR AREA COURTS

As it was mentioned earlier that the Director for area courts is the administrative head of the Area courts division. The Director for area courts is not only an inspector, but, a chief inspector for area courts. Inspectors are appointed for the control of area courts. All area and Upper area courts, and Upper area court of Appeal, offices and registeries of area courts, along with inspectors, judges, registrars, clerks and other staffs are under the administrative control of area courts' division.

It need not be mentioned that the chief judge is the head of the judiciary. So all area courts shall be subject to the supervision of the chief judge. While, the function of the chief registrar shall includes advising the chief judge towards the administration of justice in area courts. Also, the duties of inspectors for area courts encompasses general inspection of courts and investigation of complaints emanating from area courts.

The Director being the administrative head in the area courts division; therefore, all inspection carried out by inspectors for area courts are being minuted to him who would passed same to the chief registrar and thence to the chief judge for comment on the appropriate action to be taken. As well, where there is a complaint against area court's proceedings or any misconduct by a staff, the chief judge, chief registrar or director may in their own motion, direct that the complaint be investigated. It is the duties of inspectors for area courts to conduct investigation, write a report followed by recommendation and minuted the report to the director who may take appropriate action accordingly. But, complaints on other matters, it has to be referred to the chief registrar and to chief judge. That is, if the result of inspection revealed that the complaint is so gross, such as scoundering court's revenue, total decending from the arena of procedural rules or subtantive law in the court's proceedings that all these may occassion miscarriage of justice of which the appeal court may quash

the decision or gives any order as it deem fit. As well, where the conduct of the judge or any court's staff is infamous like that of demanding or taking corruption or bribery. Infamous conducts are scandalous, in the sense that they are allegations which are unbecoming in the dignity of the court for the members of the public to hear. However, in an interview, the rationale of administrative hierrachy of area courts inspection or investigation report was aptly summarised as follows:31

> *"Where a complaint was ladged at the the office of the chief registrar who directed the Director for area courts for investigation, after so doing, the Director has to minuted the written investigation report to the chief registrar for appropriate action. Similarly, if the direction emanates from the chamber of the chief judge to the chief registrar and then to the Director for area courts, the written investigation report has to ascend along the same hierrachy of the above said decending order. Moreover, the chief judge may by- passed. the chief registrar and direct the Director to investigate a complaint, as such, the Director may direct the written report through the chief registrar*

or directed it to the chief judge for approval on the action to be taken. More over, on other complaints, are usually treated at the office of the Director for area courts."

After a perusal of some functions of the director and inspectors for area courts, the following constitutes some of their specific powers:

3.2.4.1 POWER OF INSPECTION

An inspector for area court shall at all the times have access to all area courts within the state and to all the records and proceedings of such courts.32 The duties of inspectors for area courts is to conduct inspection on the administrative and judicial activities of the area courts. The courts' inspection carried out by inspectors is usually conducted either monthy, quarterly or bi-annually. Inspections may be carried out when a cause or matter arises. The powers and functions of director and inspectors for area courts has thus been outlined as follows:33

"All correspondence files should be in order;registers, books, record of proceedings, files and all documents should be inspected. Staffs should be well dressed and presentable. Furniture ; such as tables, chairs and benches are to be arranged inorder. Windows,doors, court

walls, premises and its appurtenances should be kept clean and tidy. Therefore, it is the duty of an inspector to check all these and take appropriate action where necessary."

Court fees are paid for instituting a civil case or for payment of other court's charges such as summon to a defendant or witness and other services. While, court imposed fine where after judgement in a criminal case a convict was made to pay a fine.

There is another deposit money such as where a pary to a case was made to pay another party, He has to bring the money to court deposit so that it should be paid to the other party. Moveover, before the distribution of the estate of the deceased under Islamic law of inheritence, if there is money, it has to be kept in a court deposit The duties of inspectors in checking area courts' revenue is explained as follows:34

"In checking Government revenue collected by the court, inspectors are to check treasury receipts and cashbook showing fees andfine along with the Bankteller and Government revenue receipt to see whether the money was paid into Government account. However, if there is any fees or fine that has not been paid into

the bank during the month, it has to be brought before inspectors for clarification. In case of a deposit money, a deposit receipt be issued to the person depositing the money in a court and an entry be made in the deposit register. A payment receipt has to be given to the person to whom the money was paid. As well, it has to be indicated in the deposit register that the money has been paid. The purpose of doing these is to safeguard Government revenue and individual money."

Inspector in the cause of inspection of record of proceedings are required to pick some cases and examine them. Therefore, they may likely came by some procedural errors and misconception of substantive points of law. The criminal and civil cause books are to be inspected. In a cause book, perpendicuar lines are drawn accrossed a vertical line to constitute column. Each respective column contained the date the case is registered, the number of the case and the order of the court. The content of the cause book and that of the record of proceedings should tally.

However, an inspector in the cause of inspection has to record the total number of criminal and civil cases registered, the number of disposed off and pending cases. It would lead inspectors to know how speedy or slow a court is in dispensing justice. There is need to give advice to the staffs that is after the inspection. As it was rightly noted by one of the inspectors for area courts as follows.35

> *"At the end of inspection, before the inspector left the court to which he is conducting inspection, is required to call all the staffs and admonish them on their performance. That,they should shun away from demanding and taking bribery and corruption. They should avoid coming to work late and as well obsconding before closing time. Absentism from work, any form of dereliction of duties should be stopped. Any form of statement likely to bring about commotion should be ex. punged. Punctuality to work, loyalty to leaders and discipline to laws and orders are some of the essential qualities attributable to promotion."*

An inspector is required to write a report of the inspection he conducted and send it to the director for area courts who would pass same to the chief registrar and then to the chief judge for comment on the performance of the court.

3.2.7.2. **POWER TO STAY PROCEEDINGS**

An inspector for area courts has the power to order for the stay of hearing of proceedings of any area court. That is in the cause of investigation of a complaint, an inspector has the right of access to all record of proceedings of the court. Where it appears to him that an injustice may occassion, he may give verbal order for the judge to stay with the proceedings of the case. The judge has to stop with the proceedings of the case untill he receives further instruction. However, an inspector has to write in a standard form of order of stay of proceedings along with a written letter ordering the judge to stop with the proceedings; and send them to the said court.

After investigation of the case, an inspector may either allow the case to continue, transfer the case to another court or give appropriate order as it may deem fit. In the case of **AMINA BRIGADE Vs MOHAMMED DANWANZAM**,[36] a complaint was lodged at the Area courts division, Kano over a dispute of a land. The complainant alledged that the area court have no juridiction to try the case because the cause or matter before upper area court Rijiyar Lemo, Kano is on land. After inspecting the case, it was observed that the case is on a title to land to which area courts have no jurisdiction. Therefore, the inspector ordered for the stay of proceedings of the case, the case was stopped

and the parties were verbally advised to institute their case to High court which has the jurisdiction on land matters.37

There are some considerations that an inspector for area courts has to observe before ordering for stay of proceedings of a cause or matter in a court and are as follows:

Firstly, an inspector for area courts may issue order for stay of proceedings of a cause or matter before area courts at any stage whether from the beginning or in the middle of proceedings. There and then, after final judgement an inspector cannot exercise the power of stay of proceedings; but, he can only report the case or for an aggrieved party to lodge appeal to any appropriate appeal court.

Secondly, an order for the stay of proceedings before an area court may be obtained through application. That is where any party or an aggrieved party to a cause or matter lodged a complaint to Area courts division seeking for the stay of proceedings of a case. However, the party has to show a cause of injustice in the conduct of proceedings or with the attitude of the judge. Moreover, an inspector for area courts may in his discretion issue order of stay of proceedings where after hearing a complaint before making investigation, the complaint

appear in his judgement that there is an injustice or by allowing the case to continue it may occassioned injustice.

Thirdly, after the investigation of a complaint, a prima facie fact has not been established sufficient to show that the court has no jurisdiction and power to try the case or it will not occassion injustice; an inspector may order the said court to continue with the case.38 But, if it is not within the jurisdiction and power of such court and will occassion injustice, he may direct that the cause or matter be inquired into, tried and determined by a magistrate or district court and he can only report the case to High court 39. As such, he is required to transfer the case to magistrate or district court and can only report the case to High court.

The fourth is that, though an inspector for area courts has the power to order for the stay of proceedings of a case, but, administratively, he has to write or inform the director for area courts who may approve or disapprove for the stay to be directed to the area court concerned. Where an inspector write a letter or inform the court, the judge has to stay with the proceeding of the case. As well, the judge has to comply with the verbal instruction of stay of proceedings; but, it requires a written formality to be completed and send to such court.

3.2.4.3 **POWER TO TRANSFER A CASE**

An inspector for area courts in the cause of investigation of a complaint, has the right of access to area courts and as well to all records, registers, files, books, exhibits and any other relevant documents. If the investigation revealed that either the said area court has no juridiction to try the case, there is likehood of bias on the part of the judge or a fair hearing has not been given to any of the parties to the case an inspector may transfer the case to another court of competent jurisdiction.40 As contained in the case of **JIBRIN BADUME VS INDO BADUME** 41, the plaintiff claiming inter alia for the return back of his properties of marriage. According to him, he divorced his wife infront of witnesses because she refused to stay with him. The defendant lodged a complaint at the Area court division, Kano seeking for the transfer of the case on the ground that one of her brother was remanded by the court for no just cause. After investigation, the substance of the complaint were proved.

As such, the case was transferred by an inspector to Ungogo area court, Kano. Moreover, in the case of **HAJJA DAWAKIJI VS ISMAILA DAWAKIJI** 42, a complaint for the delay of dispensation of justice was brought to Area courts division, Kano against the proceedings of Area court Rijiyar Lemo, Kano. Through investigation, the case was transferred to upper area court, Tarauni, Kano State to avoid further complaint.

An inspector for area court, in the exercise of his power may recommend in the report writting that the cause or matter be inquired into, tried and determined by any of the area court, upper areacourt, magistrate court or district court and with the approval of the recommendation, he should transfer the case. However, if the cause or matter is within the jurisdiction of the High court he has no power to make transfer, but, should only report the case to High court. This is another restriction of transferring cases towhich High court transferred to area court or any lower court and an inspector has no power to re-transfer the same case to any court as the relevant provision reads as fallows;43

> *" provided that no cause or matter which has been transferred by the High court or a magistrate's court or a District court to an area court may be reported to the High court or transferred to the same or any other magistrate's court or a District court under the provision of this section."*

The first part of the above proviso stated that no cause or matter which has been transferred by the High court to any area court may be reported to High court. The word "May" is circumstantial. That is any case transferred by the High court it depends upon the stage of the proceedings, the gravity of the miscarriage of justice and as well the jurisdiction of the High court in the civil cause or matter. For instance, any complaint of miscarriage of justice during proceedings, but, before the final judgement of the case by the area court, no

such case should be reported to high court. Therefore, an inspector may only transfer the case to any competent area or upper area court. Moreover any complaint of miscarriage of justice after the final judgement may warrant the report of the case to High court. This may be examplified where a High court transferred a case to area court, therefore, after the final judgement, a complaint was lodged at the Area courts division on a miscarriage of justice. Investigation was conducted and found to be true. An inspector may report the case to High court despite the fact that it was the case that was tranferred by the High court to area court. However, the party may decide not to go to area court division and make complaint, but, may go and make appeal to any appeal court. This is the fact that once a judge decide a case and delivered final judgement is said to be funtus officio on the ground that he can neither review the case nor the case be transferred to any high court except by report from the Area court division or for the aggrieved party to go and make appeal.

The secound part of the proviso provides that no cause or matter transferred by the magistrate's court or District court to an area court may be transferred to the same or any other magistrate's court or District court. It is to be noted that the word "may" appearred on both the first and the second proviso. As well, any case transferred by the magistrate's court or Distrit court to

an area court an inspector may not transfer the case to the same or any other magistrate's court or district court. For example, where a chief magistrate court 9, Kano transferred civil cause or matter to upper area court waje, Kano;an inspector may not retransfer the case to the same or any magistrates' court or District court.

In conclusion, it may be deducted that the proviso seeks to abhor much of transfer of cases from one court to another. To engage an series of transfer of cases is to pave avenue of ridiculing courts because a single case of the same parties would be made to move from one court to another without the final judgement of the case. Much of transfer of a case is a mere wasting of litigants' time, money and energy. It plague quick dispensation of justice on the ground that the plaintiff who instituted a court case inorder to get his right may not get it; while, the defendant appearing in a court to defend the case may not be able to exenorate himself from liability. Moreover, much of transfer of cases from one court to another may occassion injustice because the facts, evidences presented in one court when the case is transferred to another court may be distorted or exaggerated which may consequently discredited the plaintiff's right and credited the defendant.

There are some requisite formalities that inspector should fulfil them before effecting transfer of a case from one court to another. Failure or neglecting to observe them may render the transfer ineffective or delayed. That is the court to which the case is transferred may delay in taking up with the proceeding untill the formalities are completed; and are as follows:

The first one is that in the designed form for transfer, there is a space where an inspector making the transfer should state the cause or matter in which in his opinion ought for any reason the case be transferred from that area court to another. Therefore, an inspector has to state the reason of making the transfer.44

Secondly, where a cause or matter is transferred from an area court to another area court, no summons fee shall be payable if the appropriate summons fee has been paid in the area court from which the cause or matter is transferred.45 Where no sammon fee has not been paid at all, the cause or matter may be delayed from further proceedings of the court.

Thirdly, every order of transfer shall operate as stay of proceedings before an area court the proceedings is ordered to be transferred. Therefore, the court from which the case is transferred to another court has to stop from continuing

w th the case. There is no need to issue a separate order for the stay because in th: form of transfer the order of stay of preceedings is stated.

The fourth formality is after filling the form of transfer, a covering letter should be written and both the form and the letter shall be signed by the inspector effecting the transfer or by someone on his behalf. Then, the form of transfer, the covering letter, a certified true copy of proceedings of the case and the case file containing all necessary documents should be sent to the court in which the cause or matter is transferred. Moreover, both the copy of the form of transfer and the copy of the covering letter should be sent to the court from which the cause or matter is transferred.46

The fifth one is that the court to which the cause or matter is transferred shall commence with the proceedings of the case right from the beginning; but, not to continue with the proceedings of the case from the court to which the cause or matter is transferred.47 It shall be the duty of an area court judge to which any cause or matter has been transferred or returned by the High court to hear and adjucate upon such cause or matter afresh.48. But,such area court to which the cause or matter is transferred to by the high court shall not entertain any allegation to by the person against whom the proceedings have been instituted that he is not subject to the jurisdiction of area courts.49 However, where an area

court have heard and adjucated upon a cause or matter transferred to it by the high court; it shall transmit to the appropriate registrar of the high court a copy of the order made by it upon such adjucation.50

3.2.4.4 POWER TO REPORT A CASE

An inspector for area court has the power to report a case to the court to which such appeal would lie.51 Inorder to facilitate a case to be brought up to appeal court for review, a party aggrieved by the decision of the court may either decide to go to appeal court and instituted appeal or may lodge a complaint at the area courts division for the case to be reported. Where the aggrieved party decides to make appeal at the Appeal court, he has to institute the appeal within 30 days from the date of the judgement of the lower court. However, if the appeal is not made within the days allowed by the court; the aggrieved party has to institute a motion out of time. That is a written request along with affidavit stating the reasons why appeal was not made in time. The date of hearing the motion would be fixed by the court. On the hearing date, the aggrieved party has to either present his case or entail the services of a legal pactitioner to do it for him. Then, it is left to the court based on the facts presented to either extend the time within which to make appeal out of time or not to do so. If the motion is granted he should be allowed to institute the normal appeal from the decision of the area court appealed against. Where the motion is not granted, the aggrieved

party can either go to area courts division and lodge a complaint for the case to be reported or make further appeal to federal court of appeal.

However, where the aggrieved party decides not to go to appeal court and put up appeal; alternatively, he may go to Area courts division and lodge a complaint for the case to be reported. After following the normal procedure of investigation of the complaint, report writting and recommendation, if approved, the case is to be reported to appropriate appeal court. Where the recommendation for report is not approved the case should not be reported.

Therefore, any party to a case or party interested who is not satisfied with the decision of area court may either decides to go and make appeal at any appropriate appeal court or makes complaint at the Area court division for the case to be reported. As a result, before a case either to be heard, inquired into and determined by the appeal court or the same case to be reported by the Area courts division, there are some formalities worth consideration. Any failure or neglect to fulfil the whole formalities the appeal or the report shall not be entertained, and are as follows:

The first one is for the appeal court to hear and determined a case or for the inspectors for area courts to report a case to appeal court for review; the case

shall have been heard, inquired into and determined by the area or upper area court depending where the case was first instituted by the parties. A case is said to have been determined by the court is where right and liability are determined by the court between the plaintiff and the defendant. The appeal court and the area courts division shall not entertain the appeal or complaint respectivelly that has not been determined by the lower court. In the case of **GALI KANWA VS DIJE KANWA**, 52 there was appeal from the proceedings of Madobi area court Kano. The appeal court in the cause of hearing the case it discovered that the record of proceedings indicated no final determination of right or liability. The case was referred back to Madobi area court to hear, inquired into and determine the case.

Secondly, a person who is to institute appeal at the appeal court or a complaint at the Area courts devision shall be a party or a party interested in the case at the lower court. These are the parties to which appeal court should hear their appeal or for the Area court division to entertain their complaint. A party to a case that is the paintiff or the defendant can be appellant or be made respondent to the appeal. A plaintiff is a person who complains or sues in a civil action and is, also, named on the record of proceedings of the court. A plaintiff may be termed a person who seeks remedial relief for an injury or rights. 53 While, defendant is a party against whom relief or recovery is sought in an action or

accused in a criminal case.54 Where an order is made in a suit against a third person, he thereby becomes a party to the suit so as to appeal against such order.55 Therefore, a party to a case may bring a complaintof an injustice against area or upper area court for the case to be reported to any appropriate appeal court. This is because for a case to be reported, there should be a record of proceedings of the lower court to which the parties name is on the record. It is the same record of proceedings that shall fercilitate the Area courts division to report the case and the appeal court to hear the appeal.

The phrase " party interested" assumes a wider dimension for the purpose of appeal. In the common law rules, only a party to a legal title may bring an action in court. But, with the coming of the law of equity, the rule is extended to encompass a perusal of any party who has an equitable interest includes those in possession and occupation of properties, executers, administrators and other named representative may brings action.56 Any person who is affected or likely to be affected by the decision of a lower court can be made a party. A beneficiary in a will, might have been a party to the suit, he may be granted leave to appeal against a judgement affecting his interest.57 Any persons such as a group community in a town who are caught and feel aggrieved by the order of the court when on the face of the suit they were not parties, are entitled as of right to appeal against such order.58

Thirdly, such report shall be in writting and shall record the particulars of the judgement, the reasons for its being reported and shall be accompanied by a copy of the record of the case.59 When area courts' division approved the recommendation for a case to be reported to appeal court, inspector effecting the process shall put in writting letter of application for report of a case to appeal court concerned. There is a standard form for report of cases. In the form, the particulars of the judgement delivered by the lower court and the resons for its bring reported shall be recorded. There shall be record of proceedings of the lower court. Then, the letter of application, the standard form and the record of proceedings shall be transmitted to the court where the appeal shall lie.

The processes of reporting a case goes with that of appeal. That is where aggieved party by the decision of area courts decides to make appeal, he has to put notice of appeal either in writting or verbally to the registrar of the court of appeal which is synonymous with that of letter of application for report. He shall state the particulars of the judgement and the reasons of making appeal which is to be reduced in writting and the this is like that of filing the standard form of reporting a case. He shall be made to pay the court fees of filing processes. There shall be a copy of processings of the case from the lower court.

Reporting a case by the inspectors for area courts to appeal court for review is another way of making appeal on behalf of the aggrieved party. There are expenses to be paid in making report. While if it is for appeal, the aggrieved party has to incur fees for filing appeal processes. It is the duty of inspectors to prepare and write reasons for making report and he has to appear before the appeal court and present the case. But, on appeal the aggrieved party who makes the appeal has to present his case or entail the services of a private legal practitioner. Therefore, reporting a case to appeal court is meant to assist those who are not satisfied with the decision of area or upper area court to make complaint at the Area courts division for the case to be reported.

After perusing the powers of inspector for area courts whenever a complaint of injustice against the decision of area or upper area court is made by the party aggrieved to the Area courts division; there are areas to which an inspector for area court shall not exercise power of reporting a case to appeal court for review and are as follows:

3.2.4.5 POWER OF INSPECTOR TO REPORT CASES ON SPECIAL PLEA NOT TO BE EXERCIABLE

Where any proceedings are quashed by the appeal court an order of rehearing is made no plea of rejudicata[60] shall be entertained in respect of such proceeding in any subsequent procedings,[61]

Therefore, provided a case is reported for review or instituted for appeal and as a result, the appeal court quashed the proceedings of the area or upper area court and give order for the rehearing of the case to the same or any other court; no inspector or aggrieved party shall make a special plea of resjudicata in the civil cause or matter for the court to stay with the subsequent proceedings.

The area or upper area court is to disregard the plea that the case has alread been finally determined or tried by the same or another court and continue with the proceedings of the case because the proceedings of the court where the appeal emanates was quashed by the appeal court. This may be illustrated as example in an Islamic civil cause or matter that is to say, finally decided by the Upper area court, Waje, Kano. One of the parties being aggrieved by the decision makes appeal or decided to lodge a camplaint at the area courts division, Kano, that he is one of the legal heirs, but, being precluded from inheriting some other properties of his deceased father. An inspector in the cause of investigating the complaint, discovered that the fact revealed no any share was issued to the complainant. As a result, the case is to be reported for review to Sharia court of appeal, Kano. After hearing the appeal, the proceedings for the rehearing and final determination of the case was given to the Upper area court Fagge, Kano. In the cause of rehearing the case one of the parties makes a special plea of resjudicata on the ground that the same case has already been decided by the Upper area court, Waje, Kano; therefore, the Upper

area court Fagge, Kano shall disregard the plea of res Judicata and continue with the rehearing of the case. The court shall not stop from rehearing the case because it is an order from the appeal court to rehear the case from the beginning to the end.

The provision may be viewed inorder to prevent inspectors for area courts from reporting such complaints on special plea to a subsequent civil rehearing to the same or any other court where the appeal would lie. For these reasons, inspectors for area courts should be cautious and circumspectious in reporting cases on special plea. A thorough investigation should he made to see to it that the subsequent hearing or trial of the case does not emanates as a result of quashing the proceedings of the court where the appeal emanated.

However, the general rule is that there is a special plea that a party to a civil cause or matter is allowed to make so that the court has to stay with the proceedings. If the plea is proved to be true, it has to dismissed the case, the defendant to be freed.

It is the plea of resjudicate, that is where in a civil cause or matter which has been litigated upon between the same parties, issue and subject matter and finally determined by a court having jurisdiction is brought again in the subsequent proceedings between the same parties, issue and subject matter

before the same court or any other court, the parties are estopped in the subsequent proceedings from litigating the same cause or action. For example where a civil cause or matter between A'and B as to the issue of ownership over the subject matter being a horse is brought before Area court Jogana, Gezawa Local Government, Kano. The case was heard, inquired into and finally determined that A is the owner and consequently the horse was given to him.

Then B went to Area court sabon-Gari, Kano and instituted civil cause or matter against the same party that is A, on the same horse claimining that he is the rightful owner. In the cause of proceedings, A may make a special plea of resjudicata that the cause or matter has been litigated upon by the Area court Jogana. If the plea is proved to be true, the area court Sabon Gari: Kano is to stay proceedings and dismissed the case. The only recourse to be adapted by B is for him to go and make appeal or complaint for the case to be reported for review by the appeal court; but, not to go to another court and instituted a fresh lawsuit.

The persons who can make special plea to the court in civil cause or matter is any party to a case, his privy, representative, executer or administrator to a property, party interested and legal practitioner whose services are engaged. Moreover, inspector for area courts for the power they have to investigate complaints on civil causes or matters have the same power when a complaint is

made on special plea, if proved to be true, to direct the court to stay proceedings and dismissed the case.

In a plea of resjudicata, the parties, the issues involved and the subject matter in dispute must be the same in both proceedings. The question of identity of issues may not always be easy to determine except where the causes of action in both proceedings are obviously identical. In the case of judgement of area or upper courts where no pleadings are filled, the facts directly in issue in the action are determined by that judgement are to be discovered from the substance as disclosed in the records of proceedings. The substance rather than the form of action is what should be looked at in deciding what the subject matter of proceedings is in considering the indentity of the two actions is whether the same evidence would support both. When it is clear that the same question is substantially in issue in two suits, the precise form in which either suit is brought or the fact that the plaintiff in one was the defendant in the other is immaterial, the estoppel subsists between the parties,[62]

In civil cases the burden of first proving the existence or non - existence of a fact lies on the party against whom the judgement of the court would be given if no evidence were produced on either side.[63] While, when a party wishes the court to believe any fact, then the burden of proof as to that rest on that party.[64] A party who makes a special pea in a subsequent civil proceedings

has to present documentary evidence from the court which finally determined the case. The documentary evidence may be a record of proceedings of the court.

Moreover, a letter signed by the registrar or judge categorically stating that the case has already been finally determined and be addressed to the court trying the subsquent proceedings. The party may apply to the court trying the subsquent case to send to the court by requesting for its record of proceeding or a letter indicating that the case has already been heard, inquired into and finally determined. He may decides to go to the court obtain the record or the letter and present it to the court trying the case. In the alternative, he may engage the services of a private legal practioner to do it for him. The court upon receiving the record or the letter, has to stay proceeding, dismiss the case. However, where neither the record of proceedings nor any documentary evidence is presented sufficiently to show that the case has already been finally determined; the court trying the subsequence case shall not stay proceedings.

The area or upper area court which heard, inquired into and finally determined the civil case shall be a court of competent jurisdiction and power to the extent set forth in the warrant establishing it and the provisions of area courts law.[65] In civil cases area or upper area court are restricted to the jurisdiction and power on territory, person and subject matter.[66] Where a court tries a case without jurisdiction and power, the whole trial is annuallity and any party to a

suit or other proceedings may show that any judgement, order or decree was delivered by a court without jurisdiction.[67]

The plea of resjudicate can be founded on a final judgement. Such judgement is one that finally disposes of the rights of the party.[68] So there is no plea to estopped the court from subsequent proceedings if an action does not end in a final judgement, because, it was discontinued before hearing.[69]

A judgement obtained by default of appearance of any of the parties is resjudicata.[70] That is where plaintiff's action was dismissed and judgement given in favour of the defendant because of the plaintiff's failure to appear on the day of hearings, a second action by him for existence of the judgement dismissing the first action, [71] But a judgment by defaut of appearance will not, however, have this effect if it was not based on any evidence where the plaintiff did not appear but the defendant appeared without leading any evidence in support of their case.[72] Consent judgement also creates an effective special plea.[73]

In conclusion, where area or upper area courts finally decides a civil case or matter and the said case was reported by inspector for area courts to appeal court or the aggrieved party lodged appeal, as a result, the proceedings was quashed by the appeal court and order same or another court to try the case

from the beginning to the final decision no plea of resjudicata shall be entertained in the subsequent proceedings.

Therefore, where aggrieved party makes a complaint at Area Courts Division based on special plea that the case has already been determined by another court of competent jurisdiction an inspector in the cause of investigation found that the subsequent trial was as aresult of order of appeal court; however, he has no power to order for stay of proceeding on the ground of special plea and report the case again to appeal court. Nevertheless, he may advice the parties to allow the case to continue and from there any one who is not satisfied with the decision has to go and make appeal.

If the complaint emanates in the case of rehearing or retrial of the case as a result of order of appeal court, the complaint is not on special, but, is on the ground of injustice in the area of proceedings or the judge is related to a party of the case an inspector

may exercise his power to transfer the case to another court of competent jurisdiction.

32.5. TRANSFER OF STAFF

Transfer of staff of area and upper area courts from one court to another is among the administrative control of area courts. Staffs comprises judges, registrars, clerks, bailiffs, messengers, cleaners and nightwatchmen are for one reason or another being transferred. While, the Director and Inspectors for area courts are always at the Area courts division. In the cause of transfer, staffs may be posted to courts in metripolitan others in rural areas, while some staffs to Area courts division.

Transfer of staffs from one court to another may arise when some newly courts were established of which staffs should be posted there. Transfer may, also emanates as a result of complaint against staff who is not staying in peace and harmony or who engaged in corruption. At times transfer takes place on merit depending on honesty, competency, experience or suitability of qualification. A court not having enough staffs to handle its schedule of duties should be staffed as a result of transfer.

Transfer of area and upper area courts judges are effected from the office of the chief judge; if it is from the chief registrar it has to be with the consent and approval of the chief judge.[74] While transfer of other staffs emanates from the office of the Chief Registrar who usually directs the Director for area courts to effect it, but, still, the consent and approval of the Chief Judge is required.[75] All these are administrative control towards area courts.

Transfer of staff is usually prepared and typed on a titled headed paper bearing the address of the judiciary. It states the effective date or with immediate effect to which an officer should assumed duty. A letter should be sent to the Area courts division indicating the date the officer assumed duty. The letter of transfer shall contain the name of staff from the court he works to the court to which he is transferred. The transfer is only valid when the paper is signed by either the chief judge or the chief registrar. The director for area courts or any authorised officer can only sign the letter of transfer of staff on behalf of the chief judge or chief registrar of the High courts.

3.3 COMPLAINTS AGAINST AREA AND UPPER AREA COURTS

As it has been stated from the beginning of this chapter that there are two types of control of area courts that is the judicial and administrative; therefore, these are some of the methods of controlling area courts towards the

administration of justice. What of where their is an injustice in the proceeding of area or upper area court by way of decending from the arena of procedure or there is likelihood of bias on the part of the presiding judge. Therefore, viewing complaints against area and upper area courts particularly a consideration of the persons, the modes, the offices and the types, it is worth conceiving as a guide to the members of the public towards the administration of justice and are as follows:-

3.3.1 PERSONS TO MAKE COMPLAINTS

Any person who is a party to a case may make complaint against area or upper area court to the Area courts division or any appropriate complaint offices. Parties to a civil cause,or matter includes plaintiff and defendant. A plaintiff is a person who instituted a lawsuit against the defendent seeking right or remedial relief for an injury. A defendant is a person against whom relief or recovery is sought in a civil case.[76] Also, both the plaintiff and the defendant must be named in the record of courts proceedings.

Any person aggrived, though, he is not a party to a case, but, has a pecuniary or properiety right in,a case of which he is affected or likely to be affected by the decision of area or upper court may make complaint to Area courts division against the decision of that area or upper area court. In the case of

TSOHO MUSA VS MALLAM LADAN, 77. some people who are not parties to a civil case, brought a complaint before the area courts' division against the decision of upper area court Kano. They alledged inter alia that their formland were included in the distribution of the estate of the deceased person of which being a personal property shall not have been included. After the investigation, the case was reported for review to Sharia court of appeal,Kano.

Legal practitioners whose services are engaged by any party, may to the extent of their engagements makes complaint to the Area courts division. The complaint is usually effected by writting, addressed to either the director for area courts' division, the chief registrar of High courts or the the chief judge, stating the name of the person on whose behalf he is acting; the substance of the complaint; the relief sought and be signed by the legal practioner. This is contained in the case of **AUWALU DANBATTA AND OTHERS VS ESTATE OF LATE HUSAINI BEBEJI 78.** where a legal practitioner brought a letter of complaint before the Area courts division on behalf of one of the legal heirs. The substance of the complaint stated that there is a gross injustice in valueing the properties of the deceased person and the subsequent sale as directed by the court. Investigation was conducted, iota of truth were revealed and the case was reported for review to Sharia court of appeal, Kano.

Those representing parties to a case, administrators and executors to a will may bring complaint against area or upper area court on behalf of those whom they are representing. Representatives may be allowed to make complaint on behalf of a person suffering from mental infirmity, old age, sicknesses, long absence from the country or for any reasonable cause. There shall be a satisfectory proof of authority to act on behalf of the person who delegated him79.

3.3.2 THE MODES OF MAKING COMPLAINT

There are two modes of making complaint that is by oral and written. Aggrived party who wanted to make complaint against the proceeding of area or upper area court in the situation where a judge has decended from the arena of proceedings, likelihood of bias or on any complaint having to do with judicial and administrative machinery of justice is expected to forward the complaint through any of the two modes that is either by oral or written complaint and are as follows:

3.3.2.1 ORAL COMPLAINT

In making oral complaint, a complainant is expected to go to Area courts' division personally and stated his complaint, but, they have to show evidence of being authorised. As well, legal practitioner may at any time lodge oral

complaint on behalf of the complainants. A person making oral complaint is expected to see the Secretary to the Director for Area courts who would guide him to the appropriate officer who is to attend to his complaint. However, there are complaints officers, inspectors and director for area courts all these are always ready to receive complaints and take appropriate action on whether to go on with the investigation of the complaint or give proper advice. In an interview with one of the complaint officers he has this to say:

> *"The duties of complaint officer before reducing the complaint in writting inter alia is to ensure that complainant being an aggreved party is in a sober state of mind; if he is not, to employ some wordly tactics and comfort him. Then, he has to starts listening to his complaint, ask him some relevant questions on the substance of the complaint. Thereafter, he may advice him accordingly. But, where there is miscarriage of justice he has to put the complaint in witting and minuted the file to the director for area courts for further directives."80*

In taking oral complaint before the office of the Chief Registrar of the High courts, complainant would have to see the secretary. As usual, after a few questions, he has to wait for his turn. because, seeing the Chief Regstrar is

by appointment. After stating the complaint the chief registrar may direct the director for area courts to hear from the complainant, conduct investigation and write report for action to be taken, the director usually directs any of the inspectors to make the investigation, write report and forward it to him to be minuted to the chief registrar. On the action to be taken on the report, the chief registar may in making recommendation specify the action to be taken. He may, also make comment by allowing the director for area courts to take appropriate action.

Some complainants prefer going to the chamber of the chief judge and lodge a complaint before the chief judge. The chief judge being the head of the judiciary and as well, he usually sits in a court and adjucate cases, these may be interpreted that for a complainant to confer with the chief judge, it has to be by appointment basis. However, when the chamber of the chief judge is sparcely populated with visitors and complainants, a complanant may have to wait for sometimes before being ushered in by the secretary to see the chief judge. After stating the oral compfaint, the chief judge may either direct the chief registrar or the director for area courts to conduct investigation and write report and forwarded it to him for comment on the action to be taken. It is the duties of inspector for area courts to champion the cause of investigation, report

writing, followed by recommendation and the action to be taken when the recommendation is approved.

3.3.2.2. WRITTEN COMPLAINT

A written complaint against area or upper area court sufficed. Letter of complaint should either be handwritten or typed which ever is made is acceptable. The letter of complaint should be addressed to the director for area courts, the chief registrar or the chief judge depending where the complaint is to be made. The letter of complaint shall be deposited with the secretary of the division or the respective chambers on where the complaint is intended. After perusing the complaint it may be directed for investigation or for other directives to be minuted back to the officer executing the directives. The person making the compaint would be allowed some days to come back and see the secretary or the officer executing the directives on the action taken.

3.3.3. OFFICES OF FORWARDING COMPLAINTS

The area and upper area courts being not the final courts, their decisions are subject to appeal and as well to a complaint. Therefore, any person who is not satisfied with the decision of area and upper area courts, right of making appeal is allowed for him to go to any of the appeal court and make appeal. Similary, the party aggrieved by the decision of the court may decide to go to

Area courts division or any of the complaint offices and chambers and lodge complaint so that the complaint may be investigated and action be taken. These offices of making complaint are open for the ingress and egress of every aggrieved party without being prevented or hinderance to come and lodge complaint. It should be noted that fees are chargeable before complaint is to be received. All services of running complaints to be rendered by inspectors for area court on conducting investigations, report writings, action to be taken and any services carried by any officer in connection with the complaint service costs are chargeable. 81 The offices and chambers are meant to assist those who are not satisfied with the decision of area and upper area courts to go and lodge complaint for appropriate action to be taken The following are offices of making complaints.

3.3.3.1 AREA COURTS' DIVISION

The area courts' division is one of the offices any person aggrieved by the decision of area or upper area courts who intended to make complaint is suppose to go and lodge complaint. Area courts' division and its offices is the headquarter of administrative and judicial control of area and upper area courts. It is one of the divisions constituting the judiciary which is located at the High Court Complex in the Audu Bako Secretariat, Kano. Any person who wanted to make complaint against the proceedings of cases or against the judge or any staff, of

area or upper area courts should go to Area courts' division and lodge complaint. It is in the Area courts' division complaints are being investigated, as a result, report are being written followed by taking appropriate action.

3.3.3.2. CHAMBER OF THE CHIEF REGISTRAR

The chamber or office of the chief registrar of the High court, Kano is another place a complainant may lodge his complaint against the decision of the case proceedings of area or upper area courts. It is one of the duties of the chief registrar to direct for the investigation of all complaints made against the proceedings or any staff of area or upper area court. In making complaint to the office of the chief registrar one has to meet the secretary who would designate time of appointment for him to see the chief registrar. Therefore, complainant should bear the long - waiting and sometimes they may be told to come back the following day before conferring with the chief registrar. This is because, the chief registrar is the head controlling the administration of the judiciary comprising the High court, Magistrate court, and Area courts. As soon the complainant is ushered in to see the chief registrar, he should narrate his complaint to him of which he may advice him accordingly or direct the director for area courts to attend to the complaint. Comparatively, it may serve the same purpose by a complainant to state his complaint in writing and forward the letter to the secretary for onward transmission to the chief registrar rather than facing

the long queue in order to see the chief registrar. The office of the chief registrar is free for all those who want to make complaint not only against the area or upper area courts, but, to all sections of the judiciary.

3.3.3.3. CHAMBER OF THE CHIEF JUDGE

Some people striving to make complaint against area or upper area courts prefer advancing to the chamber of the chief judge and put forward their complaint. The chamber is located at the same High Court Complex adjacent to that of the chief registrar of the High court. The chief judge is the head of the judiciary. Complainants intending to confer with the chief judge and make verbal compalaints have to see the secretary who would give them time of appointments. Those with written complaints have to deposit them with the secretary who would give them time to call back and hear the steps taken.

3.3.3.4. LAW CHAMBER

Any member of the legal profession who accepted brief in form of litigation of a court case, to write petition or complaint or any legal services shall be deemed to have given solemn undertaking that he will personally conduct the services provided fees is paid. All law chambers are open to any person wishing to engage the services of legal practitioners. Any person aggrieved by the decision of area or upper area courts is free to go to any law chamber, inform the lawyer, pay him for the legal services, thereby, it is his duties to take appropriate

legal procedure for the defence of the person who engaged him. Moreover a lawyer in the conduct of legal services may decide to make appeal, write complaint or petition to the Area court division or to any appropriate officer, or take any legal action as justice of the case may deem fit.82

3.3.3.5. PUBLIC COMPLAINT COMMISSION

The public complaint commission is another place of making compalaint not only against area or upper area court, but, to any government or private organisation. The commission is set up by the Federal Government of Nigeria in order to channel the grievances of people through the commission, as a result, it should put the government on notice and to provide solution of solving the problem. The commission's' offices are opened at the secretariat of each state of the federation. In Kano state, the office of the commission is at the Federal Secretariat along Mallam Aminu International Airport road. The members of the commission assists in reducing the complaint in writing and send the letter of complaint along with the complainant to the office where the compalaint is made. They register the complaint for record purposes.

3.3.3.6. EMIR'S PALACE

The palace of the Emir of Kano state is situated at the old city of Kano. Prior to the establishment of Area courts in 1968, the palace is the centre of the

Emir's court being presided by the Emir. At the Emir's court civil and criminal cases were being heard, inquired into and finally decided. In furtherance to the coming into operation of the Area court's edict in 1968, area courts were established in each state of the Northern Nigeria to substitute Emir's courts and other native courts. Though, the Emir ceased to preside court cases, hitherto, some people prefer going to Emir's palace and lodge complaint against the decision of area and upper area courts. The Emir who without jurisdiction and power to try cases and as well enforce punishment after listenning to the complaint use to advice the parties accordingly or refer the complaint along with the complainants to Area courts division for appropriate action.

3.3.4. TYPES OF COMPLAINTS

There are divergence of complaints pouring into Area courts division and some relevant places of making complaints, some of these complaints are flimsy without reasonable cause of which the complainants may, also be advised appropriately or the courts be informed either in writing or verbally to look into the complaint and acted upon. While, other complaints lead to a total failure of justice in the courts' proceedings. There may not be authorities to which an inspector would visualize on the types of complaints, but, the following would guide inspectors on treatment of complaints.

Complaint may emanate from the conduct of proceedings in a court that is where in the cause of proceedings the judge is not complying with the laid down substantive law, procedural rules or rules of fair hearing. The importance and bearing on fair hearing have been emphasized in the case **ARIORI VS ELEMO** 83 in which **OBASAKI,JSC** states thus: *" Fair hearing therefore, must mean a trial conducted according to the legal rules formulated to ensure justice is done to the cause."*

The rules of fairhearing is that all the parties to a cause or matter must be given time and apportunity to present their cases, produce witnesses and show evidence. So where this rule has not been followed by the judge inorder to ensure a fairhearing of proceedings may give raise to a complaint and be acted upon. The rule of fairhearing in civil proceedings under the Nigeria constitution are binding on every judicial or other tribunal acting judicially and is as fallows:-

> *" In the determination of his civil rights and obligations, including any question by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by the law and constituted in such a manner as to ensure its independence and impartiality."* 84

The above provision contains the basic element of the common law principles of natural justice. It is the principles of fairness, otherwise encapsulated in the latin expression, **"audi altarem partem",** demands that all sides to a dispute be given equal opportunity to state their own side of the case. Any party to a case provided the rule of fairhearing has not been given to him in the proceedings of the court, has the right to go and make complaint. The inspectors are always available to investigate the complaint, write report and recommendation for the appropriate action to be taken.

Another area which may give rise to complaint and consquently prompt investigation is on lack of following the rule of impartiality, otherwise stated as the principle of **"nemo judex in causa sua",** posits that no person should be a judge in his own cause. That is where a judge have personal animosity or hostility, friendship, association or relationship with any of the parties which may result in the likelihood of bias or the appearance of bias, any of these shall give a good ground of making complaint. Where a judge is the owner of or associated with a business or any subject matter of controversy before his court, it means he is putting himself in a position where his personal interest will conflicts with his duties and responsiblities, therefore, this will be subject to complaint.

A judge must not ask for and accept any money, property or benefit of any kind for himself or any person on account of anything done or omitted to be done by him in the discharge of his duties. A judge shall not do or direct to be done in abuse of his office any arbitrary act prejudicial to the right of any person knowing such act is unlawful or contrary to any Government policy. A judge shall not be a member of, or belong to, or take part in any society the membership of which is incompatible with the functions and dignity of his office. Doing all these would give right to complaint.

Complaint is possible in a case where a court has no jurisdiction to try the case that is to say the cause or matter is not within the area the court is permitted to try cases or the person sued is not a native Africa and he did not give his consent.

These are some of the areas to which the aggrieved party may lodge complaint at the Area courts division or any relevant offices of making complaint towards the administration of justice.

CHAPTER THREE

NOTES AND REFERENCES

1. S1 (2) (a-c) (3) (4) The Evidence Act. (cap 112) As Amended By Decree No. 61 of 1991
2. S 61 Area Courts law cap 9, vol. 1 of the laws of the Kano State of Nigeria. 1991
3. B.M. Shani " Criminal Produre in the Northern States of Nigeria" page 511
4. S.53 Area Courts law, cap 9, vol.1 of the laws of the Kano state of Nigeria. 1991.
5. Chief Otoola Atanda and Others Vs Mosudi Olanrewaju Others (1988) 4 of NWLR (part 89) page 394
6. For appeal as of right and appeal with leave see section 220 (1) (2) and 221 (1),(2) of the Constitution of the Federal Republic of Nigeria ,1979.
7. S 223 (2) (a) Ibid; A.Obi Okoye, "Essays on Civil Proceedings", vol. 4, paragraph 4, page 64.
8. S. 54 (a) Area Courts law, cap 9, vol. 1 of the laws of the Kano State of Nigeria. 1991; Islamic personal law is define under section 2 of the Area courts law to have the same meaning ascribe to the term under the Sharia court of appeal law of Northern Nigeria (cap 122 law of Northern

Nigeria, 1922). By uirtue of section 2 of the Sharia court of appeal law of Northern Nigeria , " Moslem Personal law" is the law applicable to the matters listed in paragraph (a) - (d) of that law. The area covered under these paragraphs include marriage, inheritence, waqf, divorce and custody of children where the parties involved in the dispute are moslems.

9. S54 (b) Area courts law cap 9, vol. 1 of the laws of the Kano State of Nigeria, 1991.

10. S. 60 Ibid

11. S.285 (1) Criminal Procedure Code law

12. S.285 (2) Ibid

13. S.43 (1) Area courts law, cap 9, vol. 1 of the laws of the Kano State of Nigeria, 1991.

14. S 77, High Court law, cap 57, vol. 2 of the laws of the Kano State of Nigeria, 1991.

15. Mandmus: is a written order issued by the High courts to an inferior court to compel the performance of a public duty or to command a defendant to fulfil any duty to which a plaintiff is personally interested.

16. Certiorari; is a written order directed to an inferior court of record commanding it to "certify" to the High court of justice some matters of a judicial character . It is used to remove civil causes or indictments from inferior courts of record into the High Court, that they may be better tried, if there has been abuse or error. S.7 Administration of justice (Miscellaneous) Act, 1938.

17. Prohibition: is a written order issued by the High Court to prohibit an inferior court from exceeding its jurisdiction, power or acting contrary to the rules of natural justice.

18 Habeas Corpus; is a written order issued by the High Court to command an inferior court to produce the person imprisoned without a legal cause with a view to command the legality of his imprisonment.

19. S.27 High Court Law, cap 57, vol 2 of the laws of the Kano State of Nigeria, 1991; E.A Keay and S.S. Richardson "Native and Customary Courts in Northern Nigeria." Page 282; S.76 High Court Law; S.43 (1) and S44 (2) (a - d) ; Area Courts law, Cap 9,Vol.1 of the laws of the Kano State of Nigeria 1991; S. 285 Criminal Procedure Code Law.

20. S 42 (1), (2) Constitution of the Federal Republic of Nigeria, 1979.

21. S33 (1), (3) Ibid

22. S 33 (4) Ibid; order 8, rule 1, Area courts (Civil Procedure) Rules 1971

23. Supra

24. S 43 (3) Area Court law, cap 9, Vol.1. of the laws of the Kano State of Nigeria, 1991.

25. S 43 (2) (a), (b) Ibid

26. S.44 (2) (a) Ibid

27. S.44 (2) (c) Ibid

28. S 44 (2) (d) Ibid

29. Order 25, Rule1 (1), Area Court (Civil Procedure) Rules 1971

30. Order 25, Rule 1(b) Ibid.

31. A.S. Muazu Soron Dinki, Director for Area Courts' Division, Judiciary, Kano State.

32. S.47 Area Courts law, cap 9. vol.1 of the laws of the Kano State of Nigeria, 1991.

33. A.B. Chiranci, Inspector for Area Courts, Area Courts' Division Judiciary, Kano State.

34. A.H. Bala fegge. Inspector for area courts, Ibid

35. S. Sule, : inspector for area courts, Ibid

36. KAC/Com/71/95 of 5/2/95 Area Courts' division, Judicary, Kano State.

37. S.34, 39 Land Use Act, 1978

38. S.48 (2) (a) Area courts Law., Cap 9, Vol 1 of the laws of the Kano of Nigeria, 1991.

39. S.48 (2) (b) Ibid

40. S.48 (1)(b) Area Courts law ,cap 9, vol.1 of the laws of the Kano State of Nigeria, 1991

41. DAC/COM/708/94 of 24/11/94 Area Courts division, Judiciary, Kano.

42. DAC/COM/231/93 of 6/5/93.Ibid

43. Proviso to S.48 (2) (c) Area Courts Law, cap 9, vol.1 of the laws of the Kano State of Nigeria, 1991.

44. S.48 (3) Ibid

45. S.48 (5) Ibid

46. Order 6, Rule 1 and 2 (a) (b) (i) (ii), Area Courts (Civil Procedure) Rules, 1971

47. Order 6, Rule 3, Ibid

48. Order 6, Rule 4, (1) Ibid

49 Proviso to order 6, Rule 4 (1) ibid

50. Order 6, rule 4 (2) Ibid

51. S.50 (1) Area court law, cap 9, vol. 1 of the laws of the Kano State of Nigeria, 1991.

52. SCA/CV/KN/259/94 Sharia Court of Appeal, Kano State

53. Black's Law Dictionary, 1991, 6th edition , page 1150

54. Page 419 Ibid,

55. A.Obi Okoye, "Essays on Civil Proceedings " Volume 4 paragraph 47, page 24

56. Black's Law Dictionary 1991, 6th edition, page 112

57 Maja Vs Johnson 13 WACA, page 297

58 Ubagu and Others Vs Okachi and Another (1964)1, All NLR 36.

59 S. 50 (2) Area Courts Law, cap 9, vol. 1 of the laws of the Kano State of Nigeria, 1991.

60 Plea of Res judicata: Is a special plea in a civil cause or matter which has been litigated upon between the parties and finally determined by a court of record having jurisdiction in the matter is brought again in a subsequent proceedings between the same parties. In this case, any of the parties are estopped in the subequent proceeding from litigating the same cause of action; section 53 and 54 "The Evidence Act, 1991"; A. Aguda, "Nigerian Law of Evidence", Page 235 to 242; F. N. Nwadialo,"

"Modern Nigerian Law of Evidence", page 51; Black's Law Dictionary, 1991, 6 edition, page 1305.

61 Section 51 Area Courts Law

62 Ojo Vs Abadie (1955) 15, WACA, page 54

63 S. 136 The Evidence Act (cap 112) As Amended by Degree No. 61 of 1991

64 S. 135 (1) and (2), Ibid.

65 S. 18 Area Court Law, cap 9, vol. 1 of the Laws of the Kano State of Nigeria, 1991.

66 S. 19 (1) , (2) and (3), Ibid; section 15, part 11, first schedule Area Courts Law, Ibid.

67 S. 53, The Evidence Act (cap 112) As Amended by Degree No, 61 of 1991.

68 **Ude and Others Vs Agu and Others** (1961) All, NLR, page 65.

69 **Cootes Vs Ford** (1899)2 ch. 93 at page 99

70. **Ekpe Vs Antia** (1940) 10 WACA, page 19

71. **Odu Vs John Holt and Co.** (1950) 19 NLR, page 127

72 **Udofe and Others Vs Aqusisua and Others** (1973) NMLR, page 286

73. **Talabi Vs Adeseye** (1972) 1 all NLR, (part 2) Page 255

74 Letter Number, S/CAC/22/T.1/7, Area Courts Division, Judiciary, Kano State.

75. Letter Number DAC/111/STA/95, Ibid.

76. Black's Law Dictionary, 1991, 6th edition, page 419

77. DAC/COM/243/95 of 22/5/95, Area Courts Division, Judiciary, Kano State

78 DAC/COM/504/94 of 9/8/94, Area Courts Division, Judiciary, Kano State. Complainant have to pay a chargeable complant fees before registering the complaint. Refer to Appendix B. for the circular

79 Dandela Wakilin General Haladu Vs Mai Unguwa Lauwali DAC/COM/405/95, Area Courts Division Judiciary, Kano State.

80 I. M. Hadi complaint Officer, Area Courts Division, Judiciary, Kano State.

81 Alhaji Magaji Garba Vs Murtala Mansur, DAC/COM/473/96 of 8/7/96, Area Courts Division, Judiciary, Kano State.

82 DAC/COM/888/92/17/8/92, Area Courts Division, Judiciary, Kano State.

83 (1983) ISCNL R, page 1

84 S. 33(1), Constitution of the Federal Republic of Nigeria, 1979.

CHAPTER FOUR

4.0 JURISDICTION OF AREA COURTS IN CIVIL CASES

Jurisdiction is the authority given to a court to decide cases brought to it. It is the extent of the power to which a court or a judge may exercise in deciding cases.

The theory of jurisdiction means whenever a court or a judicial tribunal is empowered or requirred to inquired into a question of law or fact for the purpose of giving a decision on it, its findings there on cannot be impeached collaterally, but are binding untill revised. 1 **Jurisdiction has accordingly been defined as thus:**

> *"It is the power of the court to decide a matter in contraversy and presupposes the existence of a duly constituted court with control over the subject matters and the parties. Jurisdiction defines the power of the court to inquire into facts, apply the law, make decisions and declare judgement.It exists where a court has cognisance of class of cases to be decided within the power of the court."*2.

The jurisdiction to decide disputes is limited to a certain areas, persons and subject matter; while the power to try a case, the venue of trial and the applicable laws are some aspects on civil jurisdiction.

Jurisdiction is the power of the court to entertain an action, petition or other proceedings to a specified area; on a certain person; over a restricted subject matter. Therefore, jurisdiction is vital for the exercise of judicial functions. A court most have jurisdiction either from the law that create them or directly from the constitution.3 If, without jurisdiction a court or other judicial tribunal purports to act on any matters. the action or decision of the court will be liable to be set aside as illegal by a high court as it has been graphically explained as follows:

> *"Jurisdiction is the blood that gives life to the survival of an action in a court and without jurisdiction, the action will be like an animal that has been drained of its blood. It will cease to have life and any attempt to resuscitate it without infusing blood into it would be an abortive exercise."* 4

Where a civil causes or matters is brought before a court, the issue of jurisdiction of a court should be looked out by the judge in his mind. As soon he visualised that the issues of jurisdiction are satisfied, he may proceed with the trial of the case. Though, he is not requirred to write ruling that the issues of jurisdiction are fulfiled and the trial will continue.

However, where there is preliminary objection on any or all of the issues of jurisdiction, the judge is bound to write in the record of proceeding hear the arguements of the parties and write ruling on whether or not he has the jurisdiction to proceed with the trial of the case. 5

The jurisdiction of area and upper area courts are usually stated in a warrant which are written on a credential certificate by the chief judge naming the court which he established and be signed by him. In the establishment of area courts in Kano State: By warrant under his hand, the chief judge may establish such area court as he shall think fit. All warrants shall be operative and of effective from the date specified therein. In the same warrant, the territorial jurisdiction is made clear. The warrant will specify the grade of the court to be established whether it is area court, Upper area court or any other court .6

Formerly, grades of area courts are attached to a court building. The name of the court and their grades were conspicuously written on sign-board infront of the court. Hitherto, grades of the courts are no longer attached to court, but, they constitutes ranks given to judges and moves with them to the respective courts they are posted. Therefore, grade of a court depends on the grade of the judge posted to that court. In Kano State,

area and upper area courts' judges are categorically ranked into seven grades' namely: Area court judge grade1, Higher and Senior area court judge; principal area court judge grade 11; Principal area court judge grade 1, upper area court judge grade 11; Upper area court judge grade 1,.7

In addition, some provision of the laws envisages limits of jurisdiction on territory, person and subject matters; while some aspects on jurisdiction should be traced from various laws and circulars issued by those in authorities.

The jurisdiction of area and upper area courts in civil cases comprises the limit of jurisdiction and some aspects on jurisdiction. The limit of jurisdication are on territorial, person, and subject matter, and some aspects on jurisdiction such as the power of the court to entertain claim on amount of money or its value; the venue of trial and, as well, the law to be applied. However, for the purpose of elaboration, jurisdiction of area and upper area courts in civil causes' or matters should be considered as follows:

4.1 TERRITORIAL JURISDICTION

Territorial jurisdiction is usually stated in a warrant establishing area court. It is the power given to a court to proceed by hearing and determining cases arising within a defined areas. In other words, territorial jurisdiction is meant that the area court should function within the geographical limits of a certain area, to adjucate among the inhabitant of

that area and to handle matters arising within that area. Also, territorial jurisdiction restricts the function of a court when a summon is to be served; a warrant to be executed, an order to be enforced within and outside the state.8

4.2 JURISDICTION ON PERSONS.

The previous subtopic is on territorial jurisdiction. However, this topic is on jurisdiction on persons. For this purpose, persons are classified into two; namely those who are subject to the jurisdiction of area courts and those who are not subject to the jurisdiction, and are as follows:

4.2.1 PERSONS SUBJECT TO JURISDICTION OF AREA COURT

In order to have a clear picture of persons subject to the jurisdiction of area court,reference have to be made to some previous legislations upon those provisions the present legislation relies. Therefore, the people who can sue or be sued before the area courts should be classified under the following:

4.2.1.1 NATIVE NIGERIAN

Person subject to the jurisdiction of area or upper area courts are usually referred as "Native" which is defined as follows:

"Native of Nigeria means any person whose parents were members of any tribe or tribes indigenous to Nigeria

and the descendents of such persons; and includes any person one of whose parents was a member of such tribe; 'Native foreigner' means any person (not being a native of Nigeria) whose parents were members of a tribe or tribes indigenous to some parts of Africa and the descedants of such persons; and includes any person whose parents was a member of such a tribe".9

There are some classes of natives due to some prevailing features are subject to the jurisdiction. Those native who are permanently or temporarily residing in the cosmopolitan township of the state usually called (Sabon Gari) and in other local Government areas who belong to different states and tribes, are subject to the jurisdiction of area or upper area courts. This is stated in the case of **KOSOKO VS NAKOJI**;10 a native Nigerian from Lagos Island, a muslim Yoruba who lived in Bida for twelve years and moved to Onitsha and stay there connot claim non-subject to the jurisdiction of native tribunal in the North.

The mode of life of a native,professional status, and religious belief does not affect non-subjection to the jurisdiction of area or upper area courts. This can be found in the case of **ABENGOWE** Known as **U.P.G.A.** Lawyer case.11 **Abengowe** a practising Barrister from the

Eastern Region of Nigeria had been sentenced to imprisonment by an Alkali,court for holding a meeting without permit.In this case, he applied for habeas corpus inter alia on ground of non-subjection in that he was a practising Barrister in the Eastern Region of Nigeria. According to the applicant that it is self evident that professional status does not indicate non-native mode of life .He cited the commission report 1948 which proposed the mode of life a person must conform with that of the general community.

The report was adopted in the Laws of the Eastern Region of Nigeria. Also, being a resident of eastern region not subject to native court of northern region of Nigeria. High court ruled that the resident of eastern region are subject to their customary courts which is the "Northern native court tribunal" for all practical purposes.12 In another case, the High court ruled in the case of **LANIYAN Vs ISSAC** 13 that the plainfiff an elderly Yoruba man who appears to be barely literate could not be exampted from the jurisdiction of native tribunal.

What seems now certain as a result of these cases is that a man's religion, professional status, educational standard and the western mode of life do not of themselves affect the issue of whether a man is subject to the jurisdiction of a customary courts, area or upper area courts.

4.2.1.2 **NATIVE AFRICAN**

After the defination of persons subject to jurisdiction of area or upper area courts as native Nigerian; another provision defined those who are not native Nigerian as native foreigner or native African. However, the purpose of this topic is to classify native as native Nigerian and that of native African which has thus been defined as follows: " *any person whose parent were members of any tribe or tribes indigenous to some part of African and the decendants of any such person; any person one of whose parents was a member of such tribe."14*

Therefore, a native of Africa who is a moslem is subject to the jurisdiction of area court in Islamic civil causes or matters. This is because the mode of life of moslem is that of moslem communities all over the world. Above all, Islamic law binds all moslem vicissitude of affairs. A native of Africa despite of his religious belief is subject to the jurisdiction of area court in civil causes or matters under the application of common law or customary law. This is in view of the fact that a native Nigeria or Africa is subject to the jurisdiction of area court.

Therefore, apart from native Nigeria and native African all other people from other continents such as Europe, America, Asia and so on are not subject to the jurisdiction of area or upper area court. The previous

provisions mentioned people from Nigeria and Africa who are subject to the jurisdiction of area court. For example an American or European should not be sued in area court, without fulfilling certain conditions to be subsequently mentioned.

4.2.1.3 **PERSON WHO INSTITUTE A CIVIL SUIT**

Any person who institutes or prosecutes any causes or matters in an area court shall be subject to the jurisdiction of that area court and of any other court execising jurisdiction in that cause or matter. 15 In this, there is no difference of religious belief, custom or native.

Therefore, a European, American or a person from any country in the world, once, he instituted an action in area court shall be subject to the jurisdiction of that court. In the case FOUAD SHOUR VS FAUZIYA,16 applicant filed suit in an area court for an order to compel his wife to return to the matrimonial home. Before the hearing date, he wrote to the court withdrawing the action. though, respondent had been served with the writ of summons signed illegally by the registrar of the court. The case was not called. Respondent then informed the registrar that she wished to ask for a divorce. This was entered in the cause book as a separate suit. He applied for a declaration and order under section 16 of the Area courts law removing the respondents suit from the area court.

Held, applicant a lebanese is not subject to the jurisdiction of an area court under section 15 Area court courts law, but, was so subject by virtue of section 14 (2) of the law in the causes he himself had filed. The summon was invalid because it was signed by the registrar. The registrar had no jurisdiction to strike out the cause filed by applicant and it was not struck out by the judge on the record, Therefore, it still subsisted. There is no provision for oral service of process in the area court rules, respondent was justified in ignoring it. This shows that since the applicant filed a civil cause against his wife it means he consented to the jurisdiction of area court. Moreover, filling a court case made by the respondent is another submission to area courts jurisdiction.

4.2.1.4 **PERSON WHO CONSENTED TO A CIVIL SUIT**

Any person (without any differences of religion, custom or native) who is sued in a civil cause or matter before an area court and he consents to the jurisdiction shall be subject to the jurisdiction of that area court.17 Consent may be expressed where a person categorically states either yebally or by writing that he consents to the jurisdiction of area court. It may, also, be implied where a person did not object to the jurisdiction of area court untill after the end of the case.

4.2.1.5 ARM FORCES AND LAW ENFORCEMENT AGENCIES

In civil causes or matters members of Nigerian arm forces and law enforcement agencies are native of Nigerians. As a result, area court have jurisdiction on native Nigerians, native african, person who consented to its jurisdiction and person who instituted legal action before area court.[18]

4.2.1.6 BUSINESS NAMES

Every individual, firm or co-operation having a place of business in Nigeria and carrying on a business shall be registered under the registration of business name. 19 This does not oust the jurisdiction of area court whether registration under the business name is effected or not. The individual firm or co-operation may sue or be sued not in the registered business name, but, in the name of the principal members. The registered business has no separate existence from its members that formed it. Therefore, all the partners can be made liable in civil causes or matters. It is only registered company that have a legal status is outside the jurisdiction of area court. But any business that is registered under the registration of business name of the company Decree area court have jurisdiction to entertain civil cases brought before it in the name of people carrying the business.

4.2.1.7 **UNIONS**

There is no legal obligation on the union of workers, employees, traders or any such union to make registration. 20 Theycan sue or be sued before the area court not in the name of union,but, in the name of executive members. Therefore, whether the union is registered or not under the company Decree, 1990, they can sue or be sued in the name of the executive members, but, not in the name of registered or unregistered union. For example, area court judges of Kano state effected registration of their association under the company Decree, 1990, as such the incoperate name is designated "Area Court judges Association". Therefore, certificate is issued in respect of that name.

The registration does not give the association legal status under the law. It is only registered company under the company Decree 1990 issued with certificate of in coperation that has legal status capable to sue or be sued in the name of incoperation before the High court, Federal court of appeal or Supreme court, but, not before the area court.As a result whether the union or association is registered or not under the company Decree, 1990, still they can sue or be sued in the name of the executive members, but, not in the name of registered or unregistered association. Therefore, area court have jurisdiction on cases brought by or against the name of the members of registered or unregistered union.

4.2.2 PERSONS NOT SUBJECT TO THE CIVIL JURISDICTION OF AREA COURT

As it has been stated that there are those who are subject to the civil jurisdiction of area court such as native Nigerians native Africans, those who instituted cases or matters, those who consented, unregistered companies and so on, as well, there are those who are not subject to the civil jurisdiction of area court and are as follows:

4.2.2.1 NON - NATIVE

The word "Non-native " is usually referred to classes of persons other than the native Nigerians and native Africans. Non-Native are those who orignated from countries of other continents of the world apart from Africa. For example, America, Russia, China, Japan, India ,Saudi Arabia, England, Germany, France and so on. The question is, would these non-natives be sued in the area or upper area court? As it was previously mentioned that area or upper area court have jurisdiction on native Nigeria and native-Africa; therefore, this provision excludes non-natives. Moreover, there are non-natives who are moslems from various countries of the world risiding in the Northern part of Nigeria, as such, both the native and non-native moslems are bound by Islamic law and can sue or be sued in the area or upper area court because these courts applies some aspects of Islamic law. In addition, any non-native who instituted legal suit and those

who consented are subject to the civil juridiction of area and upper area court. This is examplefied in the case of **FOUAD SHOUR VS FAUZIYA.21** Where a plaintiff being a lebanese is not subject to the jurisdiction of area court, but, is so subject the moment he instituted a suit. This shows that a non-native who instituted a suit in area or upper area court is subject to its jurisdiction.

Therefore, area courts have no jurisdiction on cases involving a person not of African descent unless that person consents. Thus, a European of caucasian decent, cannot, without consenting, be tried or, otherwise, impleaded before an area court. The rationale seems to lie in the origin of the area court as native courts meant to administer customary law between natives only. It was probably inspired by a desire to spare foreigners the experience of being tried under unfamiliar law. As a result, applying it to persons who are not from the local of origin (without their consent) often results in a sense of unfairness, and, indeed, actual injustice, being done to the strangers.

4.2.2.2 FEDERAL, STATE, LOCAL GOVERNMENT AND THEIR AGENCIES.

Nigeria is a sovereign state to be known by the name federal republic of Nigeria. 22 The term sovereignty may be used as a synonym for independance that is Nigeria is a country having its own executive organs, legal system, and having social, political, administrative, economical policies and a demarcated boundry, then, there is a prima facie evidence of an independent country.

Nigeria, is a federation consisting of states and a federal capital territory. 23 For these reasons, the federal Government of Nigeria, state local and their respective agencies are corporate bodies. Jurisdiction of area court lies on natural person, but not on corporate bodies registered under the company decree or recognised by different laws of the country. Therefore, they cannot sue or be sued with the name federal Government of Nigeria, State, Local or any of their respective agencies before area or upper area court.

4.2.2.3 **COMPANIES**

Before, 1990 the registration of companies, Businesses ,trustees, unions and so on were governed by different laws. Companies were registered under the Companies Decree of 1968; Business under the Business Names Act,1961; while, other trustees and unions were registered under the land (perpetual sucession) Act, 1958. The registration of these bodies were conducted by the Federal Ministry of Trade. In 1990, there was major reforms of these laws and reorganisation of the institutions for the registration of these bodies. The Companies And Allied Matters Decree, 1990 was promulgated to bring all these laws under one piece of legislation. Therefore, registration of companies, business names ,trustees etc is governed by companies decree of 1990. The institution for the registration of these bodies is Corporate Affairs Commission based in Abuja with branch offices in each state of the federation. There are three different types of companies and are as follows:

The first one is a company limited by shares as the name implies means a person's liability is limited in the event of winding up of the company to the amount unpaid on the shares. This is the most common type of company that is registered by the business community whether it is public or private company.[24]

The second type of company is the one limited by guarantee. It is the type of company which is to be formed by group of persons for the promotion of commerce, arts, science, religion, sports, culture, education, research, charity or other similar objects. The income or property is to be paid, transferred directly or indirectly to the members of the company except permitted by the law. The liability of the members of a company limited by guarantee is to undertake to contribute to the assets of the company in the event of being wound up shall not at any time be less than =N= 10,000: 00.[25]

Thirdly, this is the type of company with no limit to its liability of its share capital to its members that form it. It is called unlimited company.[26]. As from the date of incorporation of a company under the Companies and Allied Matters Decree 1990 the company shall be a body corporate by it's respective registered name.[27] The registered company shall have the power of a natural person of full capacity,[28] It can sue or be sued with its registered name of the company in the high court, federal court of appeal and supreme court.[29] Therefore, area courts have no jurisdiction on registered companies.

4.2.2.4. TRUSTEES

Where one or more trustees are appointed by any community of persons bound together by custom, religion, kinship or nationality or by anybody or association for any religious, educational, literacy, scientific,

social, development, cultural, sporting or charitable purpose, the trustees, may apply for registration under the Companies Decree.[30] For example where trustees are appointed for control and management of Friday Mosques in Kano State and as such they effected registration under the Company Decree 1990 and a certificate of incorporation is issued. They became a body corporate by the name described in the certificate of incorporation. They shall have a perpetual succession and a common seal and a power to sue and be sued on its corporate name and as such trustee or trustees.[31] Area court have no jurisdiction on incorporated trustees.

4.3 JURISDICTION ON SUBJECT MATTER

Fallowing the jurisdiction of area courts on civil causes or matters, therefore, the judge after being satisfied that the civil cause or matter before him is within the territorial jurisdiction of the court, the parties are bound by the court's jurisdiction. the next issue is the subject matter jurisdiction. It is a legal action between two contending parties warranting the registration of the case before the court. The subject matter is the standard upon which the parties shall deliberate by presenting evidences, witnesses and some arguements before the court. It is on the subject matter that the substantive law and precedural rules are to be applied in order to arrived at a just decision. However, without subject matter of dispute no cause of legal action before the court. If the subject matter of dispute is

reconciled by the parties or the party's instituting the legal action applies to withdraw the case, the court has to strick out the case. The subject matter jurisdiction is usually accredated as a cause or matter. Where a court tries a case outside it territorial jurisdiction or the parties are not subject to the jurisdiction or the subject matter is not within the jurisdiction of a court the trial shall be null and void. Therefore, the following are some of the subject matters within the civil jurisdiction of area court.

4.3.1. ISLAMIC CAUSES OR MATTERS

Area court have jurisdiction on Islamic civil causes or matters. 32 The scope of this jurisdiction varies according to whether the court is an upper area court or area court of a lower grade. The jurisdiction of area courts extends to Islamic law of Marriage which is a civil contract whereby a man and woman entered into legal relationship involving rights and obligations. Through, the contract, the spouse belong to a special class whose rights and obligations are prescribed by Islamic law. Any breach of the right or obligation area or upper area court has jurisdiction to entertain the cause or matter.

Area courts have jurisdiction on cases brought to it on Islamic law of inheritence or sucession. Within the framework of the Islamic legal system as a whole the laws of inheritance occupy a particularly prominent

and important positions. Historically, they provide an excellent example of the general process of legal development in Islam. From a sociological standpoint, the law of inheritance reflect the structure of family ties and accepted social values and responsibilities within the Islamic community. Jurisdically, the law of sucession is a social technical achievement in the mathematical precision with which the right of the various heirs, in any given situation can be calculated. In most modern system of sucession rest firmly upon the freedom of the individual to determine the devolution of his property upon his decease. Under English law, the foundamental consideration is the extent to which an individual has the personal right to determine the devolution of his property after his death that the wishes of the decease as expressed in his will are paramount. Basically, the law only intervenes to specify the manner in which the property shall devolve when a person has died wholly or partially intestate where he has not made avalid will or when the testamentary disposition do not engulf the whole of his estate. Instead, Islamic law of succession imposed compulsary rules of sucession of general application for the security of the group that required that property rather than those whom the deceased might personally prefer. [33]

Another feature of the Islamic legal system which must command attention is the jurisdiction of area courts on guardianship of children.

This process of guardianship has taken root in the traditional law and become the process of modern Islamic family law in general and succession law in particular. Where there is a dispute between the father and mother as to who would take custody of children, therefore,the cause or matter is within the jurisdiction of area court.

The jurisdiction of area courts does not extend to all civil disputes, but, only to matters on moslems marriage, inheritence, guardianship of children, will and other Islamic rights.[34] These are the residues of sharia court of appeals jurisdiction which emanates from the jurisdiction of area courts. All appeals on Islamic civil causes ,or matters dicided by area courts lie with the sharia court of appeal. The case in point is that of **UMARU FANNAMI VS BUKAR SARKI,**[35] which arose from the decision of Borno State Sharia Court of Appeal. The parties gave consent to the trial court to determine their case under Islamic law and because of this the case went to sharia court of appeal; and from there to the federal court of appeal. At its sitting in kaduna, the Court of appeal with Justice Abubakar Barshir Wali presiding, justice Usman Mohammed and justice Umaru Maidamma sitting with him interpreted section 11 (e) of the sharia court of appeal law and section 242 (2) (e) of the Constitution of the Federal Republic of Nigeria, 1979. It held that the jurisdiction does not extend to all civil disputes, but, only to matters such

as moslems marriage, inheritence, guardianship of children, endownment (waqaf) and section 11 (a) to(d) of the sharia court of appeal law.Therefore,giving consent to have an issue be determined in accordance with Islamic law per se, does not give sharia court of appeal jurisdiction to hear the case on appeal if the case does not fulfil within the area enumerated by section 242 (2) (a-d) of the constitution. In conclution that is the jurisdiction of area and upper area court and as well the jurisdiction of sharia court of appeal in term of Islamic law civil causes or matters.

4.3.2. LAND CAUSES OR MATTERS

Before examining the jurisdiction of area courts on land civil causes or matters; it would be illuminative to encompass a perusal of other land laws, problem on lands, the land use decree which is the current applicable law on land, the division of lands, as a result upon which the jurisdiction of area courts should be analysed.

Prior to 1800 centuary and up to 1900, land in the Northern Nigeria belongs to the villege, the community or the family but, not to an individual. All members of the villege, the community or the family have an equal right to the lands. The chief of the villege, the headman of the community, or the head of the family are in the position of a trustee and as such hold the land for the use of the community or family, He has

control of it and any member who want a piece of it to cultivate or build upon goes to him for it. But,the land so given remains the property of the community or family.[36] However, an individual may acquire absolute ownership of land either through self-help or through a grant from traditional authority by purchase or by inheritence.[37] From there,the Fulani tribes of the Northern Nigeria under Danfodio conquered Northern Nigeria, They took the right to depose kings and create Fulani tribes rulers. Land apart from that of the community, family or individual were controlled by the Fulani rulers.

The British administration in Northern Nigeria was preceeded by the administration of the Royal Niger Company. The proclamation of 1900 and that of 1902 (Lands procla mation of 1900 declared the protectorate of Northern Nigeria later amended by the proclamation of 1900);[38] It was in 1902-3, the conquest of Sokoto Empire was undertaken by British soldiers under Lord Lugard who became the High commisioner of the Northern Nigeria. The land already acquired by the Royal Niger Company, with the exception of the company's trading posts became vested in the Government, thus becaming crowns lands. The Government, also,claimed as, successor to the conquered or deposed rulers that land rights which the notes had claimed for themselves. This class of land was described as 'public land'. Unlike crown land, which was held

by the Government intrust for Her Majesty, public land was vested in the Government intrust for the people. There were some problems relating to the administration of land in Northern Nigeria which necessitated a closer study of land tenure. The European traders were of the opinion that a system of land tenure should be adopted which would give traders a larger measure of security and thereby encourage them to develop their interest because they want a freehold or at least a long lease of land. The Government decided to take over the ownership of land. Effect was given to this policy by the land and Native Rights Proclamation of 1910, which was repealed and reenacted by the Land and Native Rights Ordinance of 1916.[39]

After the Nigerian independence in 1960, the Government of Northern Nigeria in 1962 enacted a new law called the Land Tenure law, 1962.[40] It only improved and modified the existing law by that time. The power, control and management of the land was only vested with the ministry of land. It was made quite clear that there are no absolute ownership of land . The maximum which he can hold is the right of occupancy which is defined by the law as a title to the use and occupation of land.

There and after 1967, with the creation of more states in Nigeria

it added the demand for more land for infrastructure such as roads, offices, ports, air ports, and other institutions. A larger number of people are becoming rich enough to build houses and larger farms. People in rural areas are moving to the urban areas seeking for jobs, services and houses to rent. Population pressure in cities and towns has made residential accommodation in particular a problem. The congested urban places are in need of expansion,but,land where this expansion is to be made is scarce. The growth of the Nigerian economy due mainly to the discovery of oil, heavy and large industries have been established and thus bringing about more demand for land. Acquiring land for public purposes by the Governments became very difficult and sometimes even impossible because of the cost of compensation. Therefore, not all people are aware of the courts having jurisdiction to entertain causes or matters in land. Due to the land's problems and based on the recommendations of other previous commitees,[41] the Land Use Act came into effect on march 29,1978. The Decree brought the Land and Native Right proclamation, 1910 and Land Tenure law, 1962 under a uniform land policy.

The major achievements of the Land Use Act, 1978 is that all land comprised in the territory of each state in the federation of Nigeria were vested in the Governor of that state and that land shall be held in trust and administered for the use and common benefit of all Nigerians.[42] The

decree has unified the law relating to land tenure in Nigeria. It has to a greater extent done away with the various state land laws governing land tenure system in the countries. It has made the work of a lawyer and the court easier in determining the applicable law. The decree provides various right of occuapancies of pieces of land and the jurisdiction of courts in civil causes or matters relating to land, and are as follows:

4.3.2.1 LAND COVERED BY A CERTIFICATE OF OCCUPANCY

Any land farmland or structure in the urban area or non-urban area which has a statutory right of occupancy issued by the Governor; therefore, exclusive jurisdiction lies in the Hight court in respect of proceeding of any land the subject of a statutory right of occupancy granted by the Governor; it includes a declaration of title ownership of a land acquired by the Governor or by any body; entitlement of damages to a building or any economic interest on land; any question as to the person entitled and the amount of entitlement of compensation. [43]

But, on Islamic causes or matters based on inheritence of land that is to say where a person being a moslem died and among his properties there are houses and undeveloped lands of which each has a certificate of occupancy, therefore, area court have jurisdiction to distribute the landed properties to members of the heirs, [44] provided the cause or matter is not for

a declaration of title ownership or for claiming damages done to economic interest on land,building, structure and so on.

4.3.2. LAND DEEMED TO BE GRANTED BY THE GOVERNOR

The vesting of all land in the hand and under the control of the Governor does not mean that private interest in land have been abrogated. The land use Act,1978 allows citizen to hold an interest on land called a right of occupancy which may be statutory or customary.[45]

Therefore, all land, building, structure and economic interest on land in urban area and non-urban area having statutory right of occupancy under the previous land laws prior to the coming into operation of the land use Act, 1978; and those which have no statutory right of occupancies will vest in the person who owned and developed the land as if the holder of the land was the holder of the right of occupancy.[46] For example,houses in the ancient city of kano state, other cities and township which were in existence prior to the coming into force of any land law and as well with operation of the land use Act,1978 of which no certificate of occupancy were issued to them as a result, the houses are deemed to be recognised by the Governor and there is no need to be issued with another statutory right of occupancy, It is only the Hight court shall have exclusive jurisdiction in respect of a declaration of title ownership of land, building, structure and

any economic interest on land in urban and non-urban area which are deemed to be granted by the Governor.[47]

43.2.3 LAND IN URBAN AREA

In ascertaining whether or not area court have jurisdiction on land in urban areas; it is worth knowing the area constituting urban area,as well as other current provisions of law. The distinction between urban and non-urban area is thus crucial to the holder of a right of occupancy of land. The power of the Governor of a state to decides (administrativelly) what an urban area is provided as follows: *"Subject to such general condition as may be specified by the National Council of State, the Governor may for the propose of this Act by order published in the gazette designate the parts of the area of the state constituting land in urban area."*[48] In kano state, ten kilometres radious from each local Government headquarter was designated urban area.[49] For example, the urban area of Kura local Government in kano state is from the centre of the township up to ten kilometres radius of the said local Government in kano state.

Area court has no jurisdiction for a proceedings in respect of any land in urban area whether developed or undeveloped for the determination of title ownership or any economic interest on land. Jurisdiction lies with the Hight court.[50] Where moslem died leaving landed

property covered by a certificate of occupancy or land deemed to be granted by the Governor, the land is to be distributed according to Islamic law of succession and consequently area court has the jurisdiction.[51] But, it has no jurisdiction on the determination of title ownership or any economic interest attached or formed part of the land.

4.3.2.4. LAND IN NON-URBAN AREA

Where land is situated in non-urban area otherwise known as rural area, two types of right can exit. Where the right is granted by the Governor it is called statutory right of occupancy;[52] but, if the land is granted by the local Governement is referred customary right of occupancy.[53] A right of occupancy is, also, deemed granted to any person in respect of land which is being use or vested in him before the commencement of the Decree.[54]

The proprietory character of a customary right of occupancy is much weaker than that of a statutory right. Such customary right of occupacy granted by the local Government is subject to be superceeded by the state right of occupancy granted by the Governor.

Therefore, all proceedings in respect of the customary right of occupancy is vested in the area court or other courts of equivalent

jurisdiction. Proceedings here will include proceedings for a declaration of customary title.[55]

4.4 SOME ASPECTS ON CIVIL JURISDICTION

From the beginning of this chapter. it was stated that there are some issues of consideration constituting civil jurisdiction of area and upper area courts which comprises territorial, person and subject matter of which some elaborations were made on each of the subtopic. However, there are some aspects which are connected with the civil jurisdiction of these courts. It is upon these aspects the judge shall see to them that they are all satisfied before proceeding with the case. The judge shall see to them that he has the power to try the case; the cause or matter which arose, or the defendant is within the territorial jurisdiction; also, the law to be applied authorised his court to try the case for these reasons the following are some illustration on these aspects of civil jurisdiction:

4.4.1 POWER TO TRY CIVIL CASES

Where a case is within the territorial jurisdiction of a court, the parties are subject to the jurisdiction, them the power of the court to try a case applies on the monetary amount of subject matter or for its valuation authorising the court to try the case .If it is on the monetary or valuation of the subject matter to which court's proceedings is to be deliberated upon

on claims, demand or damages and for these the law placed limit for courts to try cases. However, the power to try a case includes after having satisfied that the court has the jurisdiction, at the end of hearing and determination of the case then it has to consider the amount of claim, sentence, order or judgement the court may make in the case in which it has jurisdiction. Then,power further seek to limits the jurisdiction of several grades of area courts by stating monetary what amount of claim, sentence, order or judgement the court may make in the case in which the court has jurisdiction.

For example, where an area court judge grade 1 is allowed to entertain cases on subject matter to which the amount does not exceeds **N2,000:00;** therefore, the court have no power to exceeds the amount stipulated.

In persuance to the power to try civil cases reference has to be made on grades of area and upper area courts judges. In this chapter, it was stated that all area and upper area courts bears respective names conspicuously written on notices board infront of the court. But, grades are ranks attached to the judges and move with them to the court they are posted. Area and upper area court judges are ranked in grades and the power to try a case depends upon the grade of the judge.[56] For example

where a principal area court judge grade 1, has the power in civil actions which the debt, demand or damags do not exceed the amount of **N100,000:00** to hear and determine the case and if it exceed the amount the judge shall not try the case because the amount is more than the jurisdictional power of the court. As well, in civil causes or matters on matrimonial causes between persons married under Islamic or native law, on suit relating to custody of children, succession to property and so on, all these have a fixed amount of money depending on the grade of each area and upper area court. For an area court to try a case on more than the amount stipulated on its grade would amount to trying a case without the jurisdiction to do so and the trial is null and void.

4.4.2 VENUE OF TRIAL

Apart from the jurisdiction on territorial, person and subject matter and as well some aspects on jurisdiction of which the power to try a case was somehow been stated; the venue of trial is another aspect connected with the civil jurisdiction.

The venue of trial regulates in which and at which court a suit should be instituted otherwise conflicts of jurisdiction by courts are likely to be envisaged. The plaintiff is not at liberty to file civil suit in any court of his choice. To allow him is to pave a privilege where his interest would be

catered most. Moreover, the plaintiff may be residing in one place of the jurisdiction of area court; the defendant in another; while, the subject matter of dispute or where the cause of action arose is in another jurisdiction; therefore, it is only by the rule of venue of trial which should dictate the proper venue of the court to try the cause. The role of venue provides as follows:

> *"All civil causes or matters other than land causes shall be tried and determined by an area court which has jurisdiction over the area in which the defendant is ordinarily residing; or in which the defendant was at the time when the cause of action arose."* [57]

The above provisions provides two options to which in all civil causes or matters apart from land causes area court shall not go on trying and determining cases unless one of the following option occurred in the area of jurisdiction of the court.

The first option is that the defendant shall have been ordinarily residing within the territorial jurisdiction of the area court. The rule did not define what " ordinarily residence" means. However, in another defination it has been defined as:

"Any person who occupies a dwelling within the state, has a present interest to remain within the state for a period of time, and manifest genuiness of that interest by establishing an on going physical presence within the state is something other than merely transitory in nature. The word 'resident' when used as a noun means a dweller, habitant or occupant; one who resides or dwells in a place for a period of more or less, duration; it signifies one having a residence or one who resides or abides" [58]

Therefore, from the above defination, "ordinarily residence" of the defendant is the place where a person according to the common use of the community or by custom lives, sleeps at night and keep his belonging. For instance where a person carries out a business at kafin-maiyaki villege in kiru local Government Kano state; but, he ordinarily resides within kano municipality. There and then, the kafin-maiyaki area court or any area court in the kano municipality may constitutes a proper venue of trial. It should be noted that the place in which the defendant carries trade that he might either have a shop or a defined place known by his customers and the people of that place is the proper venue of trial.

However, a person whose ordinarily residence is not known may be sued where justice demand. For example an itinerant person who moves from one place to another for some purposes ranging from that of business, administrative or philanthropic nature. Any person who moves from one place to another without any purpose. A nomadic person who went on a visit, excursion, pilgrimage, exploration and so on residing or dwelling in a place for a period of more or less which is meant for a mere transitory nature may not be a place of his ordinary residence. As a result, all the above mentioned places may not constitutes a respective proper venue of trial.

The second option is that the defendant should have been within the territorial jurisdiction of the area court when the cause of action arose. This may be examplified where a person is ordinarily residing within the territorial jurisdiction of Gezawa Local Government in Kano state, drove his cattle up to Rano Local Government in the same State; Then the cattle in the cause of posturing tresspassed somebody's farmland and eat up crops thereby committed criminal trespass and mischief and as well there is civil case of seeking compensation. As a result, Rano area or upper area court is the venue of trial in view of the fact that it is within the jurisdiction in which the defendant was at the time when the cause of action arose. As well, this does not oust the venue of trial to be at Gezawa area court being the area the defendant is ordinarily residing.

An error of suits commenced in a wrong judicial division (in a place not a proper venue of trial) does not invalidate or vivatiate the proceeding. The court in which a suit in a wrong venue of trial has commenced may make an order for its transfer to the proper venue of trial. Another possibility is that the court may decide to proceed with the trial, the mistake of the venue notwithstanding.

Where the defendant makes such a plea in objection, no proceeding, which may have been taken previously to it shall be in any way affected thereby. The judge shall, however, ordered that the cause be transferred to the venue of trial which the defendant may prove to the judge satisfection that the cause belongs. But if the defendant fail to adduce such proof, the judge shall order that the suit be retained and proceed in the court in which it had been commenced in the wrong venue of trial. 59

4.4.3 THE LAW TO BE APPLIED

As it has been stated from the beginning of this chapter that there are certain issues constituting the jurisdiction of area court of which an area court judge should take into account before starting the proceeding of the case. The nature of the cause or matter instituted before a court is the one that shall determine the law to be applied. If it is criminal offence the penal code law and criminal procedure are the substantive and procedural

law to be applied in the trial of the case. In civil cause or matter civil proceedure rule shall be the law governing the proceedings. Moreover, if it is on Islamic civil cause or matter Islamic law shall governed the proceedings to be followed.

An Area court may have the territorial, personal and subject matter jurisdiction as well it has the power to try a case and the proper venue of trial; the law to be applied mentioned another court which has jurisdiction over that cause or matter; therefore, no other courts have the jurisdiction to try the case unless the court mentioned by the law governing the case. For example in civil cause or matter on companies incorporated under the Companies and Allied Matters Decree, 1990 area courts have no jurisdiction to entertained causes or matters brought under incorporated companies. This is because the decree per se specifically mentioned High court, Federal court of appeal and Supreme court which have the jurisdiction on in corporated companies. [60] Moreover, in civil causes or matters on marriage solemnised under the Marriage Act other than the Islamic and customary marriage, the Matrimonial Causes Rules, 1983 mentioned High court which has the jurisdiction to try the case. [61]

Therefore, whereever any law assigned jurisdiction to a certain court to try a civil cause or matter it means only that court has jurisdiction to try

the case to the exclution of all other courts. The following are some of the laws to be applied in area courts.

4.4.3.1 **ISLAMIC LAW**

Islamic law is one of the law applicable in area courts. Area courts applies, Islamic law on cases of Islamic personal law, inheritence, [62] quardianship of children and other Islamic civil causes or matters. It is made explicit in the Northern States of Nigeria that native law and custom includes moslem law. [63] Thus, for practical purposes, Islamic law and various customary laws are part of the laws applicable in the Northern states. Consequently, Islamic law is not grounded in any particular locality and can apply in appropriate cases whereever there are moslems.

In deciding whether Islamic law or customary law would be applied in determining a case between parties in controversy, the creteria is not only whether they are moslems, but, whether they regarded and conducted themselves as subject to Islamic law. In the case of **ASIATU Vs GONCALLO,** [64] Islamic law was ruled applicable in the estate of the deceased resident in lagos because he had during his life time considered himself subject to Islamic law. Whereas, in **MARIYAMU VS SADIKU EJO,** [65] two Igbirra moslems tribe married by moslem rites were held not to be bound by moslems law in their matrimonial affairs because from their conduct limits

on the type of cases they can handle where it involved .property or monetary claims.

4.4.3.2 ENGLISH OR COMMON LAW

The English law consists of the common law, doctarine of equity, statutes and subsidiary legislation. The common law meant the law of the land that was develop by judges of which its principles are to be discovered in previous cases. These does not mean that the judges makes law. When the judges do establish new rules or alter old ones, they do not declare in general that since no existence rule precisely covers the case, they are going to formulate the one they consider most appropriate, They consider the law on analogous subjects, to produce a fresh rule exactly to the issue before them, The common law was evolved by the common law judges of the court of kings Bench, the court of common pleas and the court of Exechequer all are divisions of the High court of England.

The law of equity is the rule of fairness while that of common law is a case law developed by judges. Equity is establish into a well established and reasonable body of principles. Equity was developed by lord chencellor in the chencery division of the High court of England. The rule of common law is the customary law of land and it applies to persons, actions, and things, while, the law of equity operates where the common law, is regid by providing fairness in the case. [66]

The statutes law of England is that of acts of parliament and delegated legislation. Before October 1, 1960, the British sovereign possessed power to enact rules and orders for the whole of Nigeria. The scope of the statutes law has been vasty increased by almost all aspects of society. The statutes makes provisions for such matters on public health, road transport, social welfare, industrial safety and so on.

The English law was introduced into Nigerian law by Nigerian legislation. The English law extending to Nigeria consists of statutes and subsidiary legislation made on or before October 1,1960. The law should not have been the one not yet repealed by appropriate authority in Nigeria, subject to Nigerian legislation, limit of local jurisdiction, local circumstances and formal verbal alteration. [67]

The area court shall apply the principles of English law which the parties to any civil case agreed or intended or be presumed to have agreed or intended would requlate their obligations.[68] If it appears either from the nature of the transactions out of which any suit or question may have arisen, that a party agreed that his obligations in connection with such transaction should be exclusively regulated otherwise than by customary law, the principle of English law should apply. Even where there is no express agreement the court can infer from the nature of the transaction that

the party had agreed that English law was to apply .For example in OKOLIE VS IBO,[69] the court had to determine what law governed a dispute on petrol supply between two Ibos resident in Jos in Northern Nigeria. One of the parties was a transport owner and the other operated a petrol filling station. The court expressed the view that having regard to "their respective occupations and the nature of the transaction between them and the commodity in which they delt " the parties did not intend that either Islamic law or Ibo law should apply. According to the court,"the only presumption which it seems open to a court to make is that the parties intended that their relation should be regulated by the principle of English law." Similarly, where a party who purchased a piece of land obtained a receipt mentioning the willingness of the vendor to " convey unto the said purchaser the land aforesaid at any time that may be called upon so to do and that without delay," the court observed that the parties were both aware that the document was couched in English form and that they intend that it be so cauched. The court was of the opinion that the purchaser could not claim the benefit of customary law and, therefore, his successor in title, too could not.[70]

In furtherance to the application of English law apart from that of Islamic or customary law, the area court are to apply the principles of English substantive law and procedural rules in civil cause or matter.

Though, most of the area court judges have long regarded the area court as religious courts and in every civil cause or matter they usually apply Islamic or customary law. In every cause or matter there should be a law guiding the proceedings of which an area court judge has to follow the procedure and apply the law accordingly.

4.4.3 **CUSTOMARY LAW**

Customary laws is one of the laws to be applied in civil causes or matters before area courts. The term "customary law" encompass all the various tribal laws operating among each tribe in Nigeria as well as the Islamic laws which in most (expecially the North) where the moslems are predominent.[71]

Therefore, one of the characteristic of a customary law must to be in existence at the relevant time and must be recognised and adhered to by the community. That is the customary law must be flexible not a frozen and rigid system, but, one which with the passage of time develops and modifies itself so as to be in harmony with day to day changes that normally takes place in the society. The custom that should graduate as law must be a mirrow of accepted usage.[72] For the court to enforce the native law and custom must to be an "existing native law and custom not that of by gone days".[73]

However, there is yet another characteristic which deserved to be mentioned, namely that the practice in question should not only be "customary" but it must also be "law".[74] Even, though, there seem to have no any case in which this point was established, it is still clear that the continued observance of the practice by the community is not enough. The observance must be considered as a matter of obligation which will where necessary be enforced not just as a matter of choice on

which there is general occurrence.

All rules of customary law are to undergo what is called " Validity tests" before they can be enforced as law by the court. The first one is that the customary law shall not be repugnant to natural justice,equity and good conscience. [75] The court have never attempted to offer full explaination as to the meaning of this phrase. But,the various views expressed by them in their judgement throw some light upon its purpose and meaning, the repugnancy test is intended to invalidate "barbarous" custom. In the case of **EDET VS ESSIEN**,[76] The plaintiff had paid dowry for a woman and married her.She later left him and entered into a new marriage with another man by whom she subsequently had two children. The plaintiff now alleged that under a rule of native law and custom he was entitled to the custody of these children since his dowry had not been repaid to him. The court was not convinced that such a rule existed and that even if it was in

existence it will not apply it since it will mean taking away the children from their biological father. It was decleared as void for being inconsistence with natural justice, equity and good conscience.

The second test provides that the customary law to be enforced must not be incompatible with "any law for the time being in force." [77] It has been arqued that"any law for the time being in force" include English law in force, and other classes of the received English law that is equity and statutes. [78] By another provision and defination, it is clear that the expression written law refers to Nigeria local enactments. [79] Therefore, the courts can only refuse to enforce an applicable rules of customary law if it is incompatible either directly or indirectly or by necessary implication with a local enactment. Where local statutes or subsidiary legislation is intended to cover the whole ground on a particular matter to the exclution of customary law, then customary rule on the same matter becomes incompatible with the local enactment or subsidiary legislation.

The third test stated that for a court to apply a custom it shall not be contrary to public policy [80] The cases reported on public policy are very few and no direct reference have ever been made by the court in reaching their decisions on third test. It may, however, be assumed that the best judicial illustration of the first test of repugnancy to natural justice

equity and good conscience is to be found in the judgement of Ross J. In **AMACHREE VS KALLIO.** [81] The plaintiff community claimed that under native law and custom it had exclusive fishing rights in the New Calabar River, and that consequently the defendant community could fish in that river if it paid acceptable tribute. The court was in any event not convinced that the customary position was as the plaintiff stated. The court it declined to enforce the right alleged. For they were held to be "contrary to the principles of natural justice and equity "and as well contrary to public policy. While, the second test on public policy is that a customary rule should not be incompatible either directly or indirectly or by necessary implication with any writen law for the time being in force. Therefore, for a court to enforce the rule of custom, It should see to it that the custom is not contrary to public policy.

The area court shall apply the custom prevailing in the area of jurisdiction of the court or binding between the parties.[82] The expression" law prevailing" in the area of jurisdiction of the court was interpreted in **R VS ILORIN NATIVE COURT exparte AREMU,** [83] Where Ademola J. held that " prevailing" meant "predominant". But, in some part of the North, the predominant law in some matter is Islamic law. The law prevailing in the area will usually also be the personal law of the parties and,hence,without doubt the law binding between them. Sometimes,

however, the personal law of the parties (or, in succession cases, the personal law of the deceased) will differ from local law, in that situation it may well be argued that the personal law is " the law binding between the parties" and as such prevail over the law of the area. In the case of AUDU DAN GADO VS SHEKARAU AND 5 Others,[84] It was a suit over succession to a farmland at Gwarzo area court involving the plaintiff and his fellow pegan tribes referred in Hausa language "Maguzawa"at the former Gwarzo Native Authority within the present Kano state. The plaintiff appeal to the then urban area court in Kano from where a further appeal went to High court which quashed the proceeding of lower courts and ordered retrial before Gwarzo area court. From there, appeal proceeded to sharia court of appeal which in applying Islamic law has dismissed the appeal and affirm the decision of the lower court and that of upper area court.

The law name the system of customary law binding between the parties as an alternative to that prevailing in the area of jurisdition. When the law binding between the parties is to apply; there are no firm rules for the identification of that law. The principle has been profounded by the Northern High court in Osuagwu Vs Soldier,[85] an action between two Ibos residing in kaduna in which the plaintiff claimed the value of a box of clothing which he alleged he had entrusted to the defendant for safe

keeping. The first instance court was the Alkali's court of Kaduna, where the Alkali applied Islamic law and awarded damages to the plaintiff. The defendant, appealed on the ground that Islamic law should not have been applied and the High court accepted his contention. Brown C.J. pointed out that the case was not a "mixed civil cause "within section 21 (2) of the native court law (because the parties personal laws were the same),so that the relevant section was 20 (a). The section required the court to choose between the native law and custom prevailing in the area and the native law and custom binding between the parties, and in the case of this type before the latter alternative should be prefered. It stated:

> *"We suggest that where the law of the court is the law prevailing in the area,but,a different law binds the parties, as where two Ibo appear as parties in the moslem court law prevails, the native court will-in the interest of justice - be reluctant to administer the law previling in the area, and if it tries the case at all it will- in the interest of justice - choose to administer the law which is binding between the parties."*

It was clear that the parties intended Ibo law (and not English law to apply), and accordingly the court remitted the case for retrial.

Unlike the English rules of common law, equity and statutes, and that of Nigeria local legislation; majority of our area court judges and magistrates were not knowlegeable in customary law; looking that customary laws are not in written form, therefore, customary law must be proved before a court by the party seeking to rely on it for the enforcement of his right. In the case of **ANGU VS ATTAH**, [86] where their lordship in the privy council declared thus:

> *" As is the case with all customary law, it has to be proved in the first instance by calling witness acquainted with the native customs untill the particular customs, by frequent proof in courts, have bec me so notorious that the courts will take judicial notice of them."*

There are basicaly three (3) ways in which customary law can be proved in the law courts: The first is by calling witness or by judicial notice as to the existence of alleged customary law.[87] it is clear that the evidence of people who are versed (including the chiefs) in the customary laws of the area where the alleged customary rule exist is very important in establishing or proving the alleged native custom. It is important to note, however, that in all the provisions where witnesses

are required no mention is made about the exact number of witness required. Therefore, question as to the specific number of witness required is left to the individual view of the judge.[88] However, where a court has decided to use its discretion to call witness to give evidence upon a point of an alleged custom,the court must satisfy itself that the person to be called are independent and disintereted to either parties, and must be knowlegeable or skilled in the alleged custom. The court is to asses and weigh the evidence (of both parties) and them administer justice as the court think fit.[89] Moreover, a custom may be judicially noticed by a court to the extent of assuming that the person or class of persons concerned in that area look upon the same as binding in relation similar to those under consideration.[90]

Secondly, a custom may be established by reference to books of authority, manuscripts and other documents that may be relevant in establishing the alleged native law and custom.[91] Legal practioners have relied upon this provision to try to convince the court by tendering any book they regarded as a "book of authority" before a court of law in support or in their proof of an alleged customary rule. However, for a book to be accepted as a book of authority the author must have made through research to obtain cogent, reliable and true information from a lot of reliable and knowleaeable elders of the particular areas.

Thirdly,by the use of assesssrs who are knowlegeable in the alleged customary law. These are person regarded as experts in the

subject matter of the case under consideration, who sit with the judge and advice him on the fact of customary law, but, not on point of law.[92]

The court shall apply native laws and customs in civil causes or matters where the parties there to are natives and also between native and non-native where it may appear to the court that substantial injustice would be done in applying english law.[93] Where the subject matter of the transaction is unknown to customary law, than English law will be applied. In case where no express rule is applicable to the case or matter the court shall be governed by the doctrine of natural justice, equity and good conscience.[94]

4.4.3.4 **WRITTEN LAWS**

The area court in civil causes or matters shall apply the provisions of any written laws in respect of state matter within the local limits of the jurisdiction of such courts. The area court shall apply the provisions of all rules, orders and by laws made under the local government law or under any legislation repealed or superseeded by that law.[95] As well, area courts are to apply law made by the state and that of the Federal within the limits of their jurisdiction and power.

4.4.3.5 **SUBSTANTIVE LAWS AND ADJECTIVAL LAWS**

When a legal case is brought before a court, all the parties are present, the legal proceeding to be conducted by the judge in the issue of controversy between the parties inorder to decide the matter are of two broad division of legal proceedings namely: substantive laws and adjectival laws. Substantive law is a generic term embracing such rights as law of succession, contract, torts, crimes and so on. For example, the penal code law is a substantive law defining offences and the punishment. Similarly the written laws of the federal, state and local Government, common law, Islamic law and customary laws all these constitutes substantive laws. Therefore, subtantive law defines the legal right, duties and liabilities of the parties to the transaction in issue.

Adjectival law comprises two elements, namely, the subject matter of procedure and evidence respectivelly. Procedure deals with the method of initiating proceeding and then legal procedure to be followed by the judge from the beginning of proceeding of the case to the final decision of the matter in controversy between the parties. While, evidence law, "means the testimony whether oral, documentary or real, which may be legally recieved in order to prove or disprove some facts in dispute." [96] According to professor cross it is" the testimony, hearsy, documents, things and facts which a court will accept as evidence of the facts in issue

in a given case.[97] But, the defination by Best that evidence is "any matter of fact, the effect, tendency, or design of which is, to produce in the mind. a persuasion, affirmative or disaffirmative of the existence of some other matter of facts," and that judicial evidence is "evidence recieved by court of justice in proof or disproof of facts the existence of which come in question before them.[98]

However, professor Noke's, statement that "Judicial evidence consists of:-(1)facts which are legally admissible, and (2) the legal means of attempting to prove such facts."[99] As evidence deals with facts and proof of facts, it is essential to know that a fact includes: any thing, state of things or relation of things, capable of being perceived by the senses; and mental condition of which any person is conscious;[100] it is said to be proved" when, after considering the matters before it, the court either believes it to exist or considers its existence so probable that a prudent man ought in the circumstances of the particular case to act upon the supposition that it does exist.[101]

As a result, both the procedural law and evidence law governs the machinery by which substantive law is applied in practice. A procedural law is a legal channel to be followed in the conduct of proceedings as a framework of settling dispute. While, the law of evidence regulates the

nature, admissibility and weight of evidence that may be adduce before a judicial forum. On the side of substantive laws, area courts are to apply the law within the legal limits of its jurisdiction.[102]

On the other side of adjectival law, subject to the provisions of any written laws, rules which may be made, the practice and procedure of area courts in civil causes and matters shall be regulated in accordance with the provisions of civil procedure rules.[103] Similarly, the practice and procedure of area courts in criminal cases shall be in accordance with the criminal procedure code law.[104]

The evidence law is another version of the adjectival law, was enacted by the legislature of a colony in 1943 and came into force in 1945 of which under the same law it has been stated that this evidence law shall not apply to a judicial proceedings before native court and area courts,[105] Subquently, another decree was promulgated listing the number of courts to which the act shall apply, thereby, deleting area courts.[106] Further more, in 1991 another amendment was effected stating that the evidence law shall not apply to judicial proceedings in any civil cause or matter in or before any sharia court of appeal, customary court of appeal, area court or customary court unless the president commander in chief of the Armed Forces or the Militry Governor or Military

Administrator of a state by order published in the Gazette confer power to enforce any or all provisions of the evidence law.[107]

4.5 CONSEQUENCES OF JURISDICTION

The jurisdiction of area courts constitutes the territorial, persons and subject matter; while the power to try a case, the venue of trial and the law to be applied are some aspects of jurisdiction on civil causes or matters. In consequences, the law restricts the jurisdiction of area, and upper area court to a certain extents. An area court as a state court, cannot adjucated on a case that originates from facts or events outside the state that creates it. Also, not every person is subject to the jurisdiction of area courts. It set ceiling on the kinds of subject matters that the area and upper court can adjucate. It limited the powers of the area courts to a certain amount of money in causes or matters of claims. Moreso, the law restricts the jurisdiction of area courts on the venue of trial that is where the defendant resides or in the place the cause of action arose. As well, the law to be applied delimits the scope of jurisdiction of area court.

Comparativelly, jurisdiction is the foundation upon which a structural building is constructed of which without it the building will collapse. As lord Denning (M.R) stated in the English case of **MACFOY VS UAC:**[108]

"If an act is void, then it is in law a (nullity), it is not only bad, but in curably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there it will collapse".

Also, jurisdiction is the blood that gives life to the survival of an animal of which without it the animal shall died. [109] Therefore, any court that tries a case without the jurisdiction to do so, the trial is in law annullity, on the ground that the law authorising the trial is void.

CHAPTER FOUR

NOTES AND REFERENCES

1 It is expounded with great ability by D.M.Gordon in "The Relation of facts to jurisdiction" (1929)45 L.Q.R. 459; see also (1944) 60 L.Q.R. 250 and (1960) 1. CL. Of B.C.L. Rev. 185.

2 Black's law Dictionary, 6th edition, page 853.

3 A.G. Lagos state Vs Dogunmu (1989)3 NWLR (Part 111) Page 552.

4. Per Mohammadu Bello C.J.N. In UTIH Vs Onoyivwe, (1991) NWLR (Part) 166.

5 S.27 (a) and (b) Area courts law, Cap 9, Vol 1 of the laws of the kano state of Nigeria, 1991.

6 Refer to Appendix "A" Showing Area courts warrant

7 S I7 (1) Area courts (Amendment) law,1989 in the circular reference number DAC/5/CAC/62/1/111/91/2, Area courts division, Judiciary, Kano state.

8 Order 4, Rule 1,2 and 3 Area courts (civil procedure) Rules, 1971.

9 The word "Native" is defined in the Interpretation Act,1984 and it applied throughout the country as Federal law.

10 (1959) NRNLR page 15.

11 Z/21 M/1964 Unreported; Keay E.A. and S.S. Richardson," Native

and customary courts in Northern Nigeria", page 174

12 The Native tribunal as defined by the 1963, Interpretation Ordinance meant a court established under any ordinance authorising the establishment of a native courts, area courts or customary courts to be included.

13 (1958) NRNLR, page 115.

14 S15 (1) (a) and (b) Area Courts Law, cap. 9, Vol.1 of the laws of the Kano state of Nigeria, 1991.

15 S 14 (2) Ibid.

16 (1971) 1 NMLR, page 299.

17 S 15 (1) (c) Area Courts Law, cap.9, Vol. 1 of the laws of the Kano State of Nigeria 1991.

18 *Supra*

19 S 656 (1) Companies And Allied Matters Decree 1990.

20 S 624 (2) Ibid.

21 Supra.

22 S 2 (1) Constitution of the Federal Republic of Nigeria 1979.

23 S 2 (2) Ibid.

24 S 21 (a) Companies And Allied Matters Decree 1990.

25 S 21 (b) Ibid

26 S 21 (c) Ibid

27 S 37 Ibid

28 S. 38 Ibid

29 Paragraph 18, section 650 Ibid.

30 S. 673 (1) Ibid.

31 S. 673 (2) and S 679 (1) Ibid.

32 S. 4 (2) Area Courts Law cap 9 vol. 1 of the Laws of the Kano State of Nigeria 1991.

33 Coulson, "Succession In The Muslim Family" page 1.

34 S. 242 (2) (a), Constitution of the Federal Republic of Nigeria 1979; S. 11 (a-d), Sharia Court of Appeal Law.

35 (Unreported) No. CA/ 3 / 16S / 84 of January 30, 1985, Sharia Court of Appeal, Borno State.

36 Amodu Tijjani Vs Secretary of Southern Nigeria, (1921) A.C. 399 at p.404, cited from Rayner, Report of Land Tenure in West Africa, 1898. This case is cited with approval in Sunmonu Vs Disu Raphael (1927) A.C. p.881.

37 C.O. Olawoye, "Title to Land in Nigeria" P. 20 -21.

38 The proclamation No 8 of 1900 which declared the protectorate of Northern Nigeria; Later amended by the proclamation No 14 of 1902.

39 Cap. 105, Laws of the Federation of Nigeria and Lagos, 1948 Revision.

40 Cap. 59 Laws of Northern Nigeria, 1963 Revision.

41 In 1976 the federal Military Government appointed Rent Control Panel to Study the system of land control, management and distribution.

The panel submitted its recommendation inter alia that the government should take over all undeveloped lands and by so doing this it should promulgate a statutory law. The recommendation was accepted. Moreover, at the same year the Constitution Drafting Committee (CDC) was inaugrated based with some terms of reference of which among them it recommends the nationalisation of all undeveloped lands in Nigeria in order to allow equal distribution of lands to people.

42 S. 1 Land Use Act 1978

43 S. 39 Ibid.

44 Provision to sub section 2 of section 21 Area Courts Law cap.9 Vol.1 of the Laws of the Kano State of Nigeria 1991.

45 Supra.

46 S. 34 Land Use Act 1978.

47 S. 39 (1) (2) Area Courts Law cap. 9 vol.1 of the Laws of the Kano State of Nigeria 1991.

48 S. 3 Land Use Act 1978.

49 Supra.

50 Supra.

51 Supra.

52 S. 5 Land Use Act 1978.

53 S.6 Ibid

54 S.36 Ibid

55 S.41 Ibid

56 Supra

57 S.19 (2) (a) and (b) Area courts law, cap 9, Vol 1 of the Laws of the Kano State of Nigeria, 1991.

58 Black's law dictionary, 6th edition, page 1309.

59 University of Nigeria Nsukka Vs Orazulike Trading Company Ltd (1939) 5 NWLR (part 119) page 19

60 Supra

61 Order I, Rule 4, Matrimonial Causes Rules, 1983

62 S.4 (2) Area Courts Law, Cap 9, Vol 1 of the Laws of the Kano State of Nigeria, 1991.

63 S.2 Native courts law, 1956

64 (1900)1 NLR, Page 43.

65. (1961) NRNLR, Page 81

66 PARK; "The Sources of Nigeria Law", page 5-13

67 OBILADE: "The Nigeria legal System" page 69-82

68 S.20(3) Area Courts Law, Cap 9 Vol. 1 of the Laws of the Kano State of Nigeria, 1991.

69. (1958) N.R.N.L.R., page 89

70 Griffin Vs Talabi (1948) 12 W.A.C.A. page 371.

71. Supra

72 Owonyin Vs Omotosho (1961) 1 All NLR 304, page 309

73. Lewis Vs Bankole (1908) 1 NLR 81

74 Park: "The Sources of Nigerian Law. "page 68.

75 Proviso to section 14 (3) Evidence Act, (Cap) 112) As Amended by Decree No. 61 of 1991.

76 (1932) 11 NLR page 47

77 S.34 (1) High Court. Law, Cap 57, Vol. 2 of the laws of the Kano State of Nigeria, 1991.

78. Re Adadevor (1951) 13 WACA 304 at page 310; Adesubokan Vs Yinusa (1971) NNLR 77.

79 S.20 Supreme Court ordinance No. 6 of 1914; Section 3 of the interpretation law (Western Regions law 1959 Cap 44; of Bendel, Ogun, Ondo and Oyo State.

80 Proviso to S.14 (3), of the Evidence Act (Cap 112) As Amended by Decree No. 61 of 1991.

81. (1914) 2 NLR. page 108.

82. S.21 (1) (a) Area courts law Cap 9, Vol. 1 of laws of the Kano State of Nigeria, 1991.

83. (1953) 20 NLR page 144

84 Sharia Court of Appeal Kano, No. SCA/CV/KN/22/171, decided on 18/6/1971. The information about this case reached me through Justice Sunusi Chiroma High court of justice, Kano State.

85 (1959) NRNLR page 39.

86 (1916) P.C. page 74; Giwa Vs Erinmilokun (1961) 1 All NLR, page 294.

87 S. 14 (1) Evidence Act, (Cap 112) As Amended by Decree No. 61 of 1991

88. Dawodu Vs Danmole (1962) 1 WLR. page 1053.

89. INYANG VS ITA (1929) 9, NLR page 84.

90. S.14 (3) of the Evidence Act (Cap) 112) As Amended by Decree No. 61 of 1991.

91. S.59 Ibid

92. Sarkin Pawa Vs Akangbe (1961) WNLR page 268.

93. S.34 (1) and (2), High Court Law, Cap 57, Vol 2 of the laws of the Kano State of Nigeria, 1991.

94. Proviso to 21 (1) (c) Area courts law, cap 9, Vol 1 of the laws of the Kano State of Nigeria, 1991.

95 S. 20 (1) (c) Ibid

96. Phipson, Law of Evidence, 11th edition, page 3.

97 Cross, on Evidence, 4th edition, page 1

98 Principles of law of Evidence (1922) P.P,6,22 and 23.

99. An introduction to Evidence, 4th edition page 6

100 S.2 (1) Evidence Act, (Cap 112) As Amended by Dereee No 61 of 1991.

101 S.2 (2) (a) (b) and (c) Ibid

102 S.20 (1) (a) (b) (c) (2) and (3) Area courts law; cap 9, Vol 1, of the laws of Kano State of Nigeria, 1991; S.21 (1) (a) (b) (c) and (2) Ibid.

103 S.26 (1) Ibid

104. S.26 (2) Ibid

105 S.1 (4) (c) Evidence Act, 1945.

106. The Revised Edition (Laws of the Federation of Nigeria) Decree, 1990.

107 S.1 (2) (c) The Evidence Act, (Cap 112) As, Amended by Dreeree No. 61 of 1991.

108. (1962) A.C. page 152; this English judicial decision is also followed by the Nigeria case of Skenconsult (Nig) Ltd and Another Vs Godwin Skendy Ukey (1981) 1 S.C. page 6; Alhaji Baba Bakin Salati Vs Talle Shehu (1986) 1 ,S.C.J. page 332.

109 Utih Vs Onoyivwe, Supra.

CHAPTER FIVE

5.0 SOME ASPECTS ON PARTIES TO A CIVIL CAUSE IN AREA COURTS.

In the preceding chapter four, jurisdiction of area and upper area court along with some aspects constituting jurisdiction have, in its class, so far, been explained. However, in this chapter, some aspects on parties to a civil cause in area and upper area court would be dwelled on.

The principle rationalises the functions involued on, are only some aspects of parties, joinder, alteration and death of parties to a civil cause before area and upper area court. Party in a case may be known by registering his case in a court; others are either joined or altered in the due proceedings of the case on one part. While, on the second part, the chapter deals with appearance of parties in area court, legal consequences of non-appearance, as well, legal representation.

Appearance of parties in court is mandatory, so much without it, the proceedings of the court may be rendered abuse of legal processes. However, before becoming a party to a civil cause or matter in area or upper area court the cause shall have been instituted by the plaintiff against the defendant. Unlike other intricated processes of instituting civil cause or matter in other courts, that of area court requires no much legal formalities.

5.1 COMMENCEMENT OF CIVIL SUIT

In the process of pretrial issues that is for the commencement of civil suit in area and upper area court, an intending plaintiff shall lodge his complaint either orally or in writting.1 at the appropriate court registry before the registrar or clerk in-charge, or with judge in chamber.

Moreover, complaint shall be commenced by the paintiff in person or by his authorised representative of the person making the complaint. 2 The plaintiff is expected to state categorically the substance of the complaint. He is, also, to tell the name of witnesses and evidences (if any) for an effective commencement of his suit.

The court where after listenning the complaint it appears that it has no legal jurisdiction and power to try the case may, advice the person to go to another appropriate and competent court and lodge complaint. Also, where the cause or matter fails to disclose any cause of action, the court shall refuse to order for the registration of the case; provided the refusal to entertain the complaint shall not preclude the plaintiff from presenting a fresh and substance complaint to the said or another court.3

Where the court has the jurisdiction and power to try the cause or matter and there is substance of establishing the case, then , the judge may order for the registration of the case, the entry of the complaint in the cause book and that of the record of proceedings. Before doing that, it is the duty of the court registrar or any clerk to assess the court fees and after payment, he shall issue a receipt of the fees and register the complaint in the cause book. He is also to state in the cause book the date of instituting the suit, the case number, names of the parties and the hearing date. From there, a case file be opened in respect of the case. Thereon, a messenger or bailiff be sent with the summon to the defendant to appear on the hearing date, while, the plaintiff be informed to appear on the same date.

It should be noted that service of summon shall be effected by handling the dublicate copy of the summon to the defendant to sign which shall be returned to the court.4 The orignal of the summon containing the particulars of the case number, the names of the parties, substance of the complaint, hearing date and so on be handed to the defendant. Where such service of summon cannot be conveniently be effected, the court after being satisfied by affidavit may order substitute service be effected by delivery to one of the following.5

First, by handling the summon or document to the agent of the person to be served or some other person to whom there is a reasonable probability that it should come to the knowledge of the person to be served.

Secondly, where the first method cannot be effected, service of summon is to be by advertisement in the Federal Government Gazette or State Government Gazette or in some Newspapers circulating within the state.

Then, the third is by notice put up at the court house or some other place of public resort of the district wherein the proceedings in respect of which the service is made.

Fourthly, by affixing the summon or document to the usual or last known place of abode or of business of the person to be served. In persuance of such successive services, each shall be deemed to be good and sufficient service of the said summon or document upon the person to be served.

On service out of the jurisdiction of the court, but, within the state, the summon, warrant or order shall be forwarded to the court within the jurisdiction is to be served, executed or enforced.6

Moreover, if the summon, warrant or order is to be served to the defended residing outside the state, for example, from Kano State to Kaduna State, the area court in Kano State shall send the summon, warrant or order to the Chief Registrar of the High court Kano for endorsement by way of seeking his authority. After that, the messenger, shall go and give the Chief Registrar of the High court Kaduna State the said endorsed summon, warrant or order for another endorsement. From there, the same messenger will take it to the court which the defendant is residing within its territorial jurisdiction for another endorsement and assistence for effecting the service, execution or endorsement.7 All expenses of travelling, subsistence and so on shall be paid 8 and the plaintiff who instituted the case seeking his right is in a position to shoulder the expenses. However, after succeeding in the case he may add up the litigation expenses and apply to the court to make the defendant to reinbursed him.

5.2 PARTIES TO A CIVIL CAUSE OR MATTER IN AREA COURT

In persuance to some aspect on parties; before filling legal suit, careful consideration must be given to those who must to be made parties to the suit, their capacity to sue or be sued, and the capacity in which they sue or are to be sued. The one who go to a court and instituted civil suit is called a plaintiff or complainant, while, the one against whom the legal suit is instituted upon is referred as defendant.

5.2.1 PLAINTIFF

As regards those who must be made parties to the suit the cardinal rule is that only a person in whom the right to any relief claimed in a court is alleged to exist can sue as paintiff. In other words, there must be a cause of action vested in the plaintiff and against the defendant. There may be many plaintiffs and such plantiffs as may be natural persons and jurisdictic persons such as corporate companies, Government agencies and parastatals.

Nobody can be a party to a case unless he has locus standi 9. that is the right to be heard in a court. The party must have the right, relief or remedy in the cause or matter. Moreover, any person who is affected or likely to be affected by the decision of a court may apply to be joined with the plaintiffs. Plaintiff may be represented in a case for one reason or the other.

5.2.2 DEFENDANT

The cardinal rule is that only a person against whom the right to the relief claimed is alleged to exist can be sued as the defendant. The plaintiff should proof to the court that he has a case against the defendant; if he did not do that the case cannot exist.

5.3 JOINDER OF PARTIES

There may be several persons vested with the same ground for an action and there may be several persons against whom that ground of action is vested. All such persons may join as plaintiffs in the same action and sue all such others as defendant and the claim may be jointly, severally or in the alternative.

Several plaintiffs cannont unite nor can several defendants be united on one suit merely on account of the similarity of the grounds for the action. For person to join or be joined in one suit, the right for the relief claimed must vest in all the plaintiffs and against all the defendants whether jointly, severally or in the alternative. Most of the rules of joinder of parties are there in the High Courts Law, Rules and its Judicial decisions to which area courts are bound to follow on the ground that no sufficient provision in the area courts laws, rules and so on.

5.3.1 JOINDER OF PLAINTIFFS

The joinder of plaintiff to which all persons may be joined in one action as plaintiffs provides as follows:-

> *"All person may be joined in one action as plaintiffs in whom any right to a relief (in respect of or arising out of the same transaction or in a series of transaction) is alleged to exist whether jointly, severally, or in the*

alternative, where if such persons brought separate actions, any common question of law or fact would arise, and judgement may be given for such or more of plaintiff as may be found to be entitled to relief, for such relief as he or they may be entitled to without any amendment." 10

From the above quotation, a person may be joined as an additional palintiff in an action if such a joinder fulfills the objectives of the rules of joinder as follows.

The first rule is that every plaintiff should show in the statement of claim a course of action against the defendant. The question whether or not the new plaintiff has such a course of action will not be considered on the application to join them. The objectives of the rules of joinder being not the party's case should be adjucated on whether in his own farvour or not. Therefore, the application for this type of joinder is generally not contentious; but, it depends in the cause of proceedings, the presentation of evidence by the plaintiff to proof to the court that there is a cause of action against the defendant.

Secondly,the applicant must, however, make it appear to the court that the he might be entitled to a share or interest or relief or remedy in respect of matters arising in the same transaction. This is illustrated in the case of **JIA ENTERPRISES LTD VS BRITISH COMMONWEALTH INSURANCE CO. LTD**.11 It is clear for a court to allow joinder the plaintiff must make it appear to the court that .he might be entitled to a.share or relief or remedy. For example where there is a road accident claiming several people. Where several employees were dismissed by an employer. In the cause of construction of a road, which passes through several peoples' land. As such, joinder of plaintiffs is allowed, but, the amount of compensation defends on the extent of damaged suffered. Therefore, the rule of joinder of plaintiff stipulates that there must be a cause of action arising from the same transaction and the plaintiff must show that he is entitle to the compensation.

Moreover, torts cases arises from the duty fixed by the law; this duty is towards persons generally and its breach is redressible by an action for damages. The damage may take many forms: injury to the person, damage to physical property, damage to financial interest, injury to reputation and so on. Whenever a man suffers damage he is inclined to look to the law for redress.

In some torts cases there is no joinder of plaintiffs for the damage caused to such plaintiff could only he personal to each one of them. In the case of **AMACHREE AND OTHERS VS NEWINGTON,12** the nine appellants are co-plaintiffs sued the respondent claiming a single amount for damages for assault and false imprisonment. The counsel for the plaintiffs contended that they were all detained at the same time and in the same places. Held by the Supreme Court that order 4, Rule 2 of the Supreme Court (Civil Procedure) Rules permits joinder of plaintiffs, but not joinder of causes of action on the ground that the damage caused to each plaintiffs could only be personal to them, therefore, the suit was wrongly instituted and a non-suit was the proper order.

The Oxford University of England and the Combridge University of England joined as plaintiff; in an action to restrain a publisher from selling his books under the title"Oxford and Combridge Publication" thus faslely representing the book as the work of these universities. It was held that the joinder of plaintiffs is justified.13

Another case on joinder of plaintiffs decided by an area court is the case of **ALI MAIKASUWA AND OTHERS VS ESTATE OF LATE YUSUFU MAIKASUWA** 14, the plaintiffs instituted a civil suit at the Kano city area court, No.3, Shahuci quarters, within Municipal Local Government., Kano State.

The plaintiffs claimed that being the legal heirs of the deceased, are seeking by way of inheritence, the assistance of the court to distribute the estate and properties of their deceased father to them. The court after listening the parties that there is a civil cause of action based an inheritence and each party being a legal heir might be entitled to a share on the estate of the deceased; it ordered for the joinder of plaintiffs and the proceedings continues.

5.3.2 JOINDER OF DEFENDANTS

Defendent may be joined in a suit instituted by plaintiff. Defendant is the one against whom the right, relief or remedy is alleged to exist whether jointly, severally or in the alternative. The rule of joinder of defendants explained that:

> *" All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative. And judgement may be given against such one or more of the defendants as may be found to be liable according to their respective liabilities without any amendment."15*

However bearing in mind the rule for joinder of parties, the relevant questions to be determined as whether a person should be joined as defendant

are: Is it possible for the court to adjucate upon the cause unless the person is added as defendant? Is the person someone whose presence before the court affectively and completely to adjucate upon and settled all questions involved in the court?

The above questions must be answered affirmatively for the joinder to be justifiable. Moreover, the following decided cases should provide a guidance: A person injured by the negligence of two drivers may sue them jointly.16 Where a defendant I had agreed to carry meat to be exported by plaintiff and the defendant 11 to provide his ship. Held joinder of defendant is allowed.17 In the case of **ALHAJI MOHAMMADU YARO GWAMMAJA VS ABDULLAHI YAHAYA AND ANOTHER**. 18 is another example where the plaintiff sued two defendants claiming the sum of N65,550.00. As well, in case of agency where one person is acting on behalf of a principal (depending upon the circumstances of the case) both the agent and the principal may be sued.19

Moreover, apart from the rule of gender of parties, there is a certian judical decision which, also, added another rule to which a person may be added a plaintiff or defendant. The rule was stated by Lord Denning in the case of **GURTNUR VS CIRCUIT AND OTHER** as follows.20

"When two parties are in a disputes in an action of law and the determination of that will directly affect a 3rd party in his legal right or in pocket in that he would be bound to fast the bill then the court in its descretion allow him to be added as a party on such term as it think fit. By so doing the court achieve the object of the rule. It enable the matter in dispute to be effectivelly and completely adjucated upon before all those directly concerned in the outcome".

However, from the above rule and judicial decision based on the joinder of parties, it is understood that for a person to be joined is he who may be entitled to or who claim interest in the subject matter of the suit or who may likely be affected by the result. Also, the common cause of action or a series of action must be alleged to exist whether jointly, severally or in the alternative. In addition, the joinder of parties should enable the matter in dispute to be effectivelly and completely adjucated upon before the plaintiff and the defendant who are directly concerned in the outcome.

5.3.3 **NON JOINDER**

The failure to join as a party to the suit, a person who ought to have been joined either as a plaintiff or as a defendant; this gives right to the mistake of

joinder of party. For example, in Islamic law of succession, the wife of the deceased was not included in the distribution of the estate of the deceased husband. Where a person was injured by the negligent driving of two vehicle drivers. The failure to include one of the drivers amount to a non joinder of a party.

5.3.4. MISJOINDER.

Where a person who ought not have been joined either a plaintiff or defendant but, he was joined through mistake of one reason or the other. At times it is left to the one who is wrongly sued to explain to the court his innocence by saying he has no connection with either the plaintiff or the transaction. From there if it appears that he is wrongly sued the court may strike out his case.

5.3.5. WHO MAY APPLY FOR JOINDER OF PARTIES

It is not all those who makes application for another person to be joined would be considered by the court. As such, only those who have in one way or the other connection with the civil suit are usually joined as parties and the trial continues.

Application for the joinder of party may be made by the plaintiff who instituted legal suit before a court claming right, relief or remedy. As well, a

person being sued in a legal suit that is the existing defendant may apply for the joinder of a new defandant. Again, a person who is neither a plaintiff nor a defendant that is by the intervention of a person not a party to a case who may have prepertory or pecuniary interest in the subject matter may apply for the joinder of defendant. However, after listening the parties to the case, thereby, when justice of the case demands, the court may join another plaintiff or defendant to any of the existing party.

5.3.6. PROCEDURE ON APPLYING FOR JOINDER

The party seeking for joinder applied to area court judge for the joinder of parties. The application for the joinder of parties is usually stated in writing or verbally and addressed to the judge in chamber or in an open court. At any stage before, during, but, not after judgement in any civil cause or matter an area court may on such terms, as it thinks just and either on its own motion or on application may order any person who has been improperly or unnessary made a party be strick out or if he is essential to the just decision be added as a party.21

5.3.7 EFFECT OF A JOINDER

No cause or matter shall be defeated by reason of the misjoinder or non - joinder of any party.22 The court may on every causes or matters determine the issues or questions in dispute so far as regards the rights and interest of the

parties in the causes or matters. If a person is wrongly joined as defendant, but, does not apply to be struct out early enough and takes part in the defence, he may be jointly liable with the defendant. A person may be deprived for costs he would have otherwise been entitled to for the misjoinder he does not apply to be struct out early enough and takes part in the defence.

5.4. APPEARANCE OF PARTIES TO A CIVIL CAUSE IN AREA COURT

On the date fixed for hearing of the case, all the parties must appear in the court. Those whose presence are necessary apart from the plaintiff and defendant including their witnesses, representatives and so on shall attend the court. The court room or any place in which an area or upper area court shall sit to hear and determine any proceedings shall be an open court to which all the members of the public shall have right of access while shall be of good behaviour and the extent to which the capacity of the court shall contain. Unless specifically stated that their presence should be dispensed with, if not, Bona fide representatives of the press, court officials and legal practitioners appearing in the case should be allowed in court.

However, an area court judge may exclude members of the public from sitting of the court for public safety, public morality, where the administration of justice would be rendered impracticable without the express permission of the court 23. The expression the "public" excluded infants and children. They are

not allowed in the court during trial unless such infant or child is a party to a case or is required as a witness. Where a court has made an order excluding members of the public from sittings, such court may order any person failing to comply with such order to be arrested and ejected from the court.24.

5.4.1. APPEARANCE OF PLAINTIFF

The plaintiff to a suit shall attend the court in person. If his solicitor attends court, it will be essential that the party shall be present. Where a plaintiff has no lawyer and is prevented by some good or sufficient cause from attending the court in person, he may send his master, servant, clerk, a member of his family or any person he so wishes to attend and inform the court.

5.4.2. NON - APPEARANCE OF PLAINTIFF

Failure of the palintiff at any adjournment of such hearing to attend, the court shall strike out the cause unless the court sees good reasons to the contrary and any such reasons shall be recorded in the appropriate records.25 Where the defendant has a counterclaim against the plaintiff who did not attend court without any good or sufficient reasons, the court will proceed to the hearing and determination of the counter claim and give judgement for the defendant with or without costs or adjourn the hearing and cause notice to be given to the plaintiff. 26 On the date of hearing of a cause or matter if both parties appeared and the

plaintiff is unable to state his case against the defendant: instead of the court to strikeout his case, the court may non-suit the plaintiff. A non-suit means giving the plaintiff a secound chance to proof his case. The court has to consider whether in this case would be wronging the defendant, and on the other hand whether the dismissal of the case would be wronging the plaintiff. 27

5.4.3. NON - APPEARANCE OF DEFENDANT

On the date of hearing of a cause, if the paintiff appeared and the defendant who was dully served with the notice of appearence did not attend court without good cause, the court on due proof of service of the process and upon being satisfied the time between the date of service and the date of hearing was sufficient for the defendant to have appeared had he wished to do so proceed to the hearing of the cause on part of the plaintiff and give judgement as if both parties had appeared. 28

When the court has had and determined any cause in the absence of the defendant who has a counterclaim against the plaintiff in such cause the counterclaim shall, unless the court sees good to the contrary, be struck out and any such reason shall be recorded in the appropriate record. Where service of the process on the defendant is not proved to the satisfication of the court, the court shall fix a new date of hearing.

5.4.4 NON-APPEARANCE OF BOTH PARTIES

On the day when a cause is called on for hearing or at any adjournment of such hearing if neither party to the cause appears, the court shall strike out the cause unless the court sees good reason to the contrary. Any such reason shall be recorded in the appropriate record book.[29]

5.4.5. SETTING ASIDE JUDGEMENT MADE IN ABSENCE OF PARTIES

If either the plaintiff or defendant obtained judgement in the absence of such party may on sufficient reason shown, be set aside by the court upon such terms as to the court may deem fit. This is in place whenever the court decides not to excuse the absence of the plaintiff, defendant or both parties. The only order the court is entitled to make is that of stricking out the case and not one of dismissal.[30]

Any cause struck out may by leave of the court be enlisted on the cause list on such terms as to the court may deem fit. Suits may be struck out on various grounds: unexcused absence of the plaintiff or both parties on the appearance date or any other adjourned date; irregularities in the claim; non-compliance with the rules; material defect in the cause or matter; want of jurisdiction and on miscellaneous circumtances not warranting any other order.

The rule envisages that any order striking out a suit implies that the suit may be relisted in the cause list.31 Moreover, whether an application to relist may be granted or not depends on the reason, for stricking out the suit and the marits of the application.32

The phrase which appears in the rule "unless it sees good reason to the contrary" relates to a discretion which the court might decide to exercise to adjourn the suit and does not seem to comprehend the exercise of the power of dismissal.33 A wrong power such as one for the dismissal of the case will be set aside on appeal.34 It has been held that an application though an interlocutory proceeding is a cause and so may be relisted if struck out.35. An application shall be made to the court for leave to relist the suit, and may be heard by any magistrate or area court whether he be the magistrate or judge that struck out the suit or not.36. The application shall set out the reason for striking out the suit as well as full facts and circumtances supporting the application.

An order for leave to relist a case should not be made if the judge is not satisfied that it ought to be made. Leave to relist a case may be granted unconditionally or upon such terms as the court may deem just, depending on the circumstances of each case. There appears no time limit within which an application can be made. But an unexplained. dely may defeat an application.

Payment of cost awarded against a party to the other when the suit was struct out means the expences necessarily and actually incurred by a party on account of the proceedings in a court, such costs shall include the expences of summoning and of the attendance of the parties and witnesses and the fees paid during the proceedings. 37

Order of payment of a cost is on the descretion of the court. Payment of the cost awarded against a party when the suit was struct out is a condition to the bringing of an application to relist the suit. However, leave to relist a case may be granted unconditionally or upon such terms as to the cout may deem just. depending on the circumstances of each case. An aggrieved party can appeal against an order refusing or granting leave to relist a case.

5.5 LEGAL REPRESENTATION TO A PARTY IN AREA COURT.

A party to a suit is entitled to appear in a court by himself and conduct his case. However, prior to the coming into force of the 1979 constitution of the Federal Republic of Nigeria, litigants appearing before the area courts and sharia courts of appeal in Nigeria could not be represented by a legal practioner.38. These provisions are substantially similar to the area courts provision preventing

the services of a lawyer to depend plaintiff, defendant or any party to a civil cause or matter before area court and Sharia court of appeal.39.

Although, the sharia court of appeal has only civil jurisdiction, while, most area courts enjoy both civil and criminal jurisdiction. However, in any proceedings before the area court and sharia court of appeal may permit the appearence on behalf of any party to such proceedings of the husband, wife, guardian, servant, master or any inmate of the household who shall give a satisfctory proof that he or she has authority in that behalf.40. Representation is allowed to a relative of any person who is interested in the administration of the estate of a person who is subject to the jurisdiction of a native court.41. In any suit pending before the court a local government may be represented at any stage of the proceedings by any officer of the local government who shall satisfy the court that .he is only dully authorised in that behalf.42 Moreover, an inspector for area courts shall have the right to be heard at the appeal court on cases reported by him or any other inspector from area and upper area court.43.

Therefore, with the coming into force of the 1979 Constitution of the Federal Republic of Nigeria, it allows every person charged with a criminal offence the right to defend himself in person or by a legal practitioner of his choice. 44 If any law is inconsistence with the provisions of this Constitution,

the Constitution shall prevail and that other law shall be shall be void.45. It is settled in the case of **PETER UZODIMA VS COMMISSIONER OF POLICE** .46 that legal practitioners enjoy the right to represent accused person appearing for trial before the area courts.

The question is whether the 1979 Constitution, also, entitles legal practitioners to claim the right of audience in the civil proceedings before area courts and sharia court of appeal ?. The issue came to be decided by the court of appeal for the first time in the case of **KARIMATU YAKUBU AND ANOTHER VS ALHAJI YAKUBU TAFIDA PAIKO AND ANOTHER,** 47 Karimatu was a 19 year old girl. She was given in marriage by her father, the first respondent, to the second respondent. She resented the marriage and applied to the area court, Minna in Niger State for the annulment of the marriage on the ground that it had been contracted without her consent as her father has choosen the second respondent as her husband.

Karimatu won her case in the area court, Minna and subsequently on appeal to upper area court, when Karimatu's legal practitioner announced his appearance, he was refused audience by the court, though, the decision was on her favour. The sharia court of appeal based its decision to refuse him audience

on the ground that it found him, after questioning him to be ignorant of the Islamic law relating to the legal representation.

The issue of legal representation was one of the legal practitioner's ground of appeal at the court of appeal. Their arguement was that they had a constutional right to be represented by a legal practitioner. They question the power of the Sharia court of appeal to lay down any condition which a legal practitioner must satisfy before he would appear before it. The Sharia court of appeal law was inconsistence with the right of fair hearing as provided in section 33(6) (b) and (c) of the 1979 *Constitution of the Federal Republic of Nigeria*. The right to be represented by a legal practitioner is a constitutional right, not only in criminal trial, but, also, in civil proceedings and in all Nigerian courts.

CHAPTER FIVE

NOTES AND REFERENCES

1. It shall be noted that must of the complaints in area and upper are courts are being made orally. It is where the complainant would narrate the whole substance of his complaint to the officer in charge or the judge thereby it would be reduced in writting. Moreover, complaint may be made in writting be signed by the person making the complaint.
2. Order 2 Rule 2 Area courts (Civil Procedure) Rules, 1971
3. Order 2 Rule 4 Ibid
4. Order 3 Rule 2 Ibid
5. Order 3 Rule 5 (a), (b) and (c) Ibid
6. Order 4 Rule (1) Ibid
7. Order 4 Rule 2 (1) Ibid
8. Order 4 Rule 2 (2) and (3) Ibid.
9. Locus standi: A right of appearance in a court of justice; Black's Law Dictionary, 6th Edition, page 941, The Concise Law Dictionary, page 197. A right is an interest inform of pecuniary, proprietary, real or personal recognised and protected by the law, respect for which is a duty, and disregard of which is a wrong. Thus, a person who is wrongfully dispossed of land has a right of action in a court to recover it.
10. Oder 11 Rule I High Court (Civil Procedure) Rules, 1988.

11 (1962) 1 NLR 363

12 (1952) 14 WACA 97

13 University of Oxford and Combridge Vs Gill (1899) 1 ch. 55

14 Case No. CV/255/95 OF 22/10/95, Area Court, City No 3, Kano State.

15 order 11, Rule 3, High court (Civil Procedure) Rules, 1988

16 Bullock Vs London General Company and Others (1907) 2 KB 264

17 Compania Sansimena Vs Haulde Brother & Co Ltd. (1910) 2 KB 254

18 Case No CV/51/94, Area Court, Waje No.1, Kano State, DAC/COM/201/94 of 6/6/94 Area Courts Division, Judiciary, Kano State.

19 The primary step in determining whether the agent's act will in law bind the principal is to establish whether an agency relationship actually exists between the supposed principal and agent K.I. Igweike, Nigerian Commercial Law, page 14.

20 (1968) 2, QB 587 at 595.

21 Order 23, Rule 2, Area Courts (Civil procedure) Rules, 1971

22 Onayemi Vs Okunubi and Others (1966) NMLR, 50

23 Order 8 Rule 1 Area Court (Civil procedure) Rules, 1971; S 33 (4) (a) and (b) Constitution of the Federal Republic of Nigeria, 1979

24 Order 8, Rule 2, Area Courts (Civil procedure) Rules, 1971

25 Order 9, Rule 2, (1), Ibid

26 Order9, Rule 2 (2), Ibid

27 Craig Vs Craig (1967) NMLR, Page 52

28 Order 9, Rule 3, Area Courts (Civil Procedure) Rules, 1971

29 Order 9, Rule 1, Ibid

30 Order 9, Rule 4, Ibid

31 Esi Vs Shell B.P. (1959) W.N.L.R. Page 31

32 Ugwu Vs Aba and Others 5 ENLR, page 63

33 Oreware and Another Vs Abiegba Vs And Others (1973) 10 S.C. page 1; Ikpe Vs Ikeriowa 9 NLR page 63

34 Oranye Jibowu 13, WACA, page 41

35 UAC vs Umeugo, 3 ENLR, page 30

36 OKA vs Okereke 4, ENLR, page 83

37 Order 16, Rule1, Area Courts (Civil Procedure) Rules, 1971

38 S. 19 (1) Sharia Court of Appeal Law

39 S. 28 Area Courts Law, Cap. 9 Vol.1 of the laws of the Kano State of Nigeria, 1991.

40 S. 19 (2) (a) Sharia Court of Appeal Law

41 S 19 (2) (b) Ibid

42 S 19 (3) (b) Ibid

43 S 50 (1) (2) Area Courts Law, Cap. 9, Vol.1, of the Laws of The Kano State of Nigeria, 1991

44 S 33 (6) Constitution of the Federal Republic of Nigeria, 1979

45 S 1 (3), Ibid

46 (1982) 3 NCLR, page 325.

47 Appeal No. CA/K/80s/85 (unreported), page 13, per Usman Mohammed, Justice of the Federal Courts of Appeal.

CHAPTER SIX

6.0 CONCLUSIONS AND RECOMMENDATIONS

6.1 CONCLUSIONS

In the course of our study in the previous chapters; we have sought to analyse the various aspects of administration of civil justice in the area courts, Kano state. It was pointed out how the administration formulated its concept of justice in civil causes and matters which are in a state of flux and fluidity.

When a poor man looses a case, and he is aware of the fact that he has suffered the lost only because of the superiority or of the expert knowledge and skill of counsel of his opponents. And of course the state is not in a position to assist him in civil causes and matters; but, only in criminal case. Hence it is only with great difficulty that the masses can obtain justice from our system of administration of justice. That is why it is better to leave the matter in the hands of God to mete out perfect justice.

We have read some frequents complaints and appeals from members of the public to raise up against the operators of area courts on whose hands the standard

of justice is weakening. It appears those in authorities with their instrumentalities of administration are not unaware of the clogging movement of the wheel of justice. They are to administer the expression and realisation of the principles of justice which has acquired the force of law to rights and liabilities on causes or matters.

A critical asseesment of complaints and appeals on area courts, however, reveals that the idology and philosophy of administration of justice were not equal to the task. Though, economic strangulation should not be allowed to debase a proper conviction, consciousness and actual practice, but, a good administration unfolds itself in concrete terms by limiting public outcries.

Those unqtalified and greedy ones should be transferred and be substituted with qualified, experienced and God fearing officers to champion administratoin of justice in area courts. A limited tenure of office of director and inspectors for area courts should be fixed and should not exceed two years unless credibility in the administration is actualised. Any improper motives of appointments should be discarded. For a proper actualization of a qualification of becoming director and inspector for area courts, a criteria should be drawn and be strictly pursued in a watchful scrutining for its materialization.

Through developments, area courts exists in a part of Northern Nigeria which many unfounded mights regarding systems of political organisations are regularly peddled. Northern Nigeria where the area courts exist exclusivelly is augueable, more conservative than the states of Southern Nigeria and is considered in many quarters, as a late-comer to the tradition of English law.

Much of what goes in the area courts is, therefore, justified in the name of tradition and culture and the need to insulate the societies for which these courts alive been established from the corrupt influence of western civilization represented by the English law.

After all, area courts is the most popular and most visible to most of its users and, indeed, to most of the popular in the part of the country where it exists.

Morcover, the development of administration and adjucation of justice eminates since before 18th century which consist of a higher order of norms and virtues which our traditioanl leaders and elders aspires in settling disputes.

It was this conviction which moved into establishment of native courts which would make it more meaningful that man possesses an inherent sense of justice which urges him to be just. No less significant is administration of justice experience with the method of changing conditions which enable its standard of justice to endure up to the modern age. We have seen how native and Islamic courts responded to presures, some sought to absorb the foreign laws that imposed themselve in the Northern states of Nigeria.

The colonial government found it conveninent to recognise, maintain and use the relatively sophisticated socio - political machinery of the" Natives" in Northern Nigeria as in other parts of British Colonial Africa. It was done through the system of indirect rule as patented by frederick Lugard and Practiced by the British colonial government in Northern Nigeria.

> *" The doctorine of indirect rule (Sic) the use of the traditional chief, his council and his court as the pivot around which local administration evolved, Lugard found those institutions more fully developed at the close of the last centuary. As the traditional courts were well organised and classified them as A, B, C*

and D in a decending order of magnitude - that is, from the powerful Emir's court down to the simple village tribunds."1

The colonial regime brought law of England which were in existence before January 1, 1900 and then applicable in Northern Nigeria.

IN 1906, the colonial regime passed the provincial courts proclamation ordinance which conferred on the resident the power of appointing the members of the courts, other than the Emir's courts as well as in the appointment of the assessors who sometimes sat with the judges in deliberations. He has the power to review court cases. The native courts proclamation of 1906 recognised the native courts system significantly. The native courts were develop into grade "A" Emir's court and has jurisdiction on homicide cases. There was, also, grade "A" Limited which were chief Alkali's court and were allowed to adjucate on customary law so long as it did not involved mutilation, torture or gravious bodily harm and was not "repugnant to natural justice and humanity."2. Then grade "B, "C", "D" which were for other Alkali's court and other customary courts; while, the provincial court is without appellate jurisdiction. Under the courts ordinance of 1918, the new native courts system in Northern Nigeria was administered by an Alkali or without an assistant.

In 1914 after the amalgamation of the Northern and South into one country the laws were used up to 1933 of which another innovation was introduced by the creation of an appellate system which decision of the native courts be challenged up to high court.

The native courts were granted power to the execution of the high court to deal with land cases involving issues of customary tenure.

In 1956, on the recommendation of Brooke Commission it investigated prodical conversation of the working system of native courts with a view to receiving their position with regard to the law to be administered in them.

The recommendation was adopted and continued up to 1968. It has thus righly said that, "Historical, Area Courts are the successors of the old native courts under the native courts laws."3.

6 . 2 RECOMMENDATIONS

It most be obvious from the forgoing chapters of this thesis that in order to have a place in the scheme of administration of civil justice, the area courts require urgent and drastic reforms. The subsequent recommendations are devoted to the strategies for achieving the reform.

6 . 2 . 1 APPOINTMENT OF JUDGES

The laudable efforts of area courts law to create an affordable and sucessive court system does not seem to be matched by the quality and training of staff available for that purpose. The poor legal literacy of the staff of area courts is a critical factor in the poor quality of justice that is administered by the area courts.

The present mode of appointing judges, involving the judicial service committee. The state have a say in appointing judges and there has been a formed of large scale political bias and sentiments in appointing judicial personnel by the executive since they always appoint men who are loyal to them. Therefore, the executive as a matter of fairness should take these qualities in to consideration when appointing judges.

> *"Person selected for judicial office shall be individual of integrity and ability with appropriate training or qualification in law. Any method of judicial selection shall safeguard against judicial appointment for improper motive. In the selection of judges, there shall be no discrimination against a person on ground of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement that a candidate for judicial office must be a national of the country concerned shall not be considered discriminatory."* 4

On educational qualification at least a diploma or degree in law or Islamic law is sufficed. In addition a person shall have a sound Arabic knowledge. On the personality of a judge he must be a God-fearing, honest, of proven integrity, dedicated

highly religious, sane, free - minded, sound- moral-character and of probity are some qualifications to be taken into consideration when appointing judges.

The practice of mass appointment based on lineage or family connection should stop. It has brought about a big lost of confidence in the judiciary since most of these judges do not imbibe the aforementioned virtues.

6.2.2 INDEPENDENCE OF THE JUDICIARY

For an effective administration of justice, independence of the judiciary must to be allowed. Each arm of Government that is the Executive, the legislature and the judiciary must be allowed to perform the function assigned to it without the fear of confrontation from the other. Any of the arm of government action which is unconstitutional or at variance with the laws of the land the judiciary shall be free to declare it null and void and any attempt to execute the action shall amount to contempt of court and shall be punishable by the court.

6.2.3 LEGAL SYSTEM

The English law provide a limiting factor to the operation of customary laws. These customary ways of obtaining justice which has been

agreed by the people, the court shall not apply them as they are repugnant to natural justice, equity or good conscience or incompartable either directly or by necessary implication with any written law for the time being in force.

Moreover, civil procedure requlates proceedings in civil cases where the claim usually relates to the assertion of denial of right not resulting in the conviction and sentence of any persons. While, the criminal procedure, on other hand, applies to proceeding concerning the determination of guilt or innocence for a crime known as a law. For instance, the rules of civil procedure in the Supreme court, High court, Magistrate court, Area or Customary court differ from each other.

The Federation of the law of evidence by its inclution in the constitution under the aspect of the law of procedure in the administration of justice in Nigeria. The natonal constitution recognises the importance of procedure in the administration of justice in Nigeria. Thus in respect of court expressly created under it, the constitution makes provisions for the exercise by them of their jurisdiction in accordance with practice and procedure described by designated sources. Furthermore , rules of procedure in fact have a basis in the constitution. It guarantees of fair trial in both civil and criminal cases. All rights enshrined in the chapter are enforciable by special procedure.

In order to properly situated the regime of procedure in area court as in deed in all other courts in Nigeria. It is necessary to reconcile the English laws and customary laws with their operation of the generality of the people.

6.2.4 AREA COURTS' DIVISION

The area courts division which has the duties of administration of justice towards area courts needs reshufflement. Though, there are some proposals to phased out area courts department and control of the area court be vested with the chief judge and the chief registrar of the High court. But others suggested that the area courts department should be allowed to continued with such modification and reshufflement of experienced and qualified inspectors for area courts.[5]

However, on the reshufflement towards the inspectors for area courts, a quidelines be stipulated to see to it that both educational qualification and experience are stipulated. Towards educational qualification, a degree in law or in Islamic law and, must have attended Nigerian law school and obtained a certificate for call to the bar as a barrister and solicitor of the supreme court of Nigeria. Along side the experience, the official must have spent some considerable years in the service of the judiciary as a court - clerk, registrar, lay-magistrate, a

judge and so on. Legal counsel employed by the government, private legal and legal practitioners in the services of private organisations are qualified to apply and be appointed inspectors for area courts, thus, depending on the availability of vacancies.

6.2.5 ADMINISTRATIVE CONTROL

Another reason what makes members of the public to lose confidence in area courts is the lack of proper supervisory control by the authorities concerned. The authorities are the High court, Sharia court of appeal, the chief judge, the chief registrar, inspectors for area courts and in some circumstances the Ministry of justice, the Bar Association and its members who are Barristers at law.

These authorities are not unaware of the ugly thing that are happening in the area courts and, yet, there is insufficient evidence of appropriate action by them. For instance the case of the former Judge of Area court in Malali quarter, kaduna, Kaduna state, Alhaji Maude about whom much have been said on the detention of a legal practitioner Emmanuel Osagie. The chief judge invited Alhaji Abbas Maude to give his own version of the story that led to the detention of the lawyer. The judge did not deny that he detained the lawyer and he gave a different explaination for his action. Owing to the unsatisfactory reaction

of the chief judge, the then chairman of the Nigerian Bar Association, kaduna, Branch, Gbemiga Abegunde, called all legal practitioners in kaduna to a general boycott of the courts in kaduna.[6] It took the intervention of the state Military governor to convince the office of the chief judge to institute proper investigation into the allegations against the area court judge.[7] All that came out of the investigation, was an order for the transfer of Alhaji Abbas to another area court in the state. The experience of Zainab, a female lawyer in Sokoto tells her own personal experience in the following words:

> *"One incident occurred last year when I stood up to stand for a client in Talatan Mafara and judge and his clerk as if they planned it, all chorused: 'Auzu Bilahi.'*[8] *I was shocked but before I could get over my shock, they all stayed a walkout protesting the presence of a lady lawyer in court. I had to leave the court premises full of embarrassment. I reported the matter to the N.B.A. Officials and the authorities of the Ministry of Justice. N.B.A.*[9] *wrote a letter while the Ministry of justice did nothing."*[10]

As a result from this experience, Zainab reported that she and her female friends have religiously kept away from the area courts. It is to the

credibility of the legal process that courts and their personals do nothing to frighten away suitors and counsels from the judicial forum. The point was made by the Supreme Court of Nigeria in the case of **WOLUCHEM VS WOKOMA.**[11] as follows: " We also take it that as a rule the court ought not to do anything which is likely to generate fear in the minds of the litigants ... intimidation it is said, tends at least, to deminish the quality of justice."

6.2.6 JUDICIAL PRECEDENT

Unlike High Court, judicial decisions which are daily confiled in a preview of genuine academic and journalistic reporting, the unwritten appeal court decision on area court judgement of cases appears a serious lapses of authority. Most of the decisions of high court, Sharia courts of Appeal and so on emanating from area courts are not reported to the extent of forming judicial precedent.[12]

The system of judicial precedent is a common law tradition to which some case decided by high court are used as authorities in deciding other cases. Thought some area court judges are not qualified lawyers, but, in a manner of speaking the area court system, with its entire machinery for the administration of the law is a victim of common law methodology. Therefore, all efforts has to be made to see to it that area courts decision are being reported.

6.2.7 SHORTAGE OF STATIONERY.

One complaint that is no long novel is the chronic and serious shortage of stationery in court. On countless instances, administration of justice is lamentable slowed down as a result of litigants being unable to file actions and other processes in court because of reasons as spurious as finance clerks being unable to get official reciepts to use. At other times, the excuse might be lack of file jackets or duplicating papers, typing sheets or materials as inconsequantial as green tags. The situation becomes even more serious when at the end of hearing of a matter, litigants have to buy typing sheets to type judgements. However , at times, the stationery being supplied to courts are usually embezzled by court officials.

Formally, all purchases and supplies of writting materials were left for the courts. It was when the imprest money were being wrongly converted that the office of the chief registrar took control of all purchases and supplies of writting materials, The present system of supply of stationery to court by the office of the Chief registrar of High court being assisted by the office of Director for finance are not to be left uncritised for one reason or the other for the shortage of stationery to courts.

Looking at the significances of stationeries of which there has to be record of proceedings of cases, documentations and other processes of which without stationeries the whole judicial and administrative processes shall

be disrupted; therefore, the following three types of suggestions along with some strick measures to be taken may enhance to cater for the problems of shortage of stationeries in courts and offices of the judiciary.

The first suggestion on how to wipe out shortage of stationeries in courts is for the office of the chief registrar High court and that of the director for finance should as usual continue with the purchasing and supplying of stationeries to courts. Though,this suggestion, it farvours some courts who may have connection with the store officers to be getting stationeries. However, by making these two offices to champion the purchase and supply of stationeries to court, the offices would always be circumspectious on the types of stationeries required. Those that are about to be finished and so on for immediate purchase and supply to courts.

The second suggestion for overcoming the shortage of stationeries is that courts should be entrusted with the purchase of all stationeries needed for their use and as a result they should be entrusted with the purchase money. Therefore, at the end of the month, cheques of money should be written and address to the judge of the court.Itis for the court to buy the stationeries. However, some courts instead of buying the stationeries may use the money on a different purpose.

Where the first or second suggestion proves in effective on shortage of stationeries in court, for this purpose, the third suggestion is that stationeries should be divided into two types. On one hand, those that are to be printed like file jacket bearing the name of the judiciary, letter headed paper e.t.c.; and other technical equipments such as, duplicating papers, stencils, stapling machine, punch, record of proceedings and so on, the office of chief regestrar being assisted by the office of the Director for finance should be responsible for the purchase and supply of the said stationeries to courts. On the other hand, courts, also, should be entrusted with the purchare of stationeries which are of immediate usage like biros, writting papers, correction fluids, tags, pins, clippers etc. This suggestion is more preparable because it allowes office of the chief regestrar and that of the Director for finance to be purchasing and supplying stationeries to courts which are not available in markets except through contract as previously examplified by file- jacket bearing the name of the judiciary.

Moreover, there are other heavy technical equipments which are seldom use by courts such as photostart - machine, duplicating machine etc. and other stationeries inform of stencil, duplicating machine etc. for all these the two offices should not only be responsible for their purchase , but, they should be kept at the said offices for the use of courts. Also, to entrust courts with purchases of stationeries which are of immediate usage is to

save time,cost and energy of courts'official of commutering from their respective courts to the offices of the chief resgistrar, the Director for finance and the store seeking for stationeries. It, also, ensures perpetuaty of stationeries in courts.

However, upon following any of the above suggestions on how to overcome shortage of stationery in courts, there are other strick measures to be supervised to ensure constant availability of writting materials.

The first one is that with the establishment of more courts in the state. It calls for more purchase and supply of stationeries to those courts. For this, the Government may be adamant to maintain the present allocation of funds for stationery to courts; while, there are demand for more stationeries. Therefore, the Government should increase more funds for the purchase of stationeries to judiciary.

The second measure is for the judiciary to see to it that the funds are not diverted to another purpose rather than the purchase of stationery. Also, there should be no contract with the third party, but, the chief registrar should directly purchase stationeries from it source.

Thirdly, on the distribution of stationeries to courts all writting materials of immediate usage should be distributed to courts at the end of every month; while, others should be left at the headquarter vest on requisitions made by respective courts.

Fourthly, all judges of respective courts should be supervising stationeries supplied to courts and see to them that they are use for court purposes.

6.2.8 LITIGATION EXPENCES

The parties that appear before the area courts are usually the poor and underprivileged rural folks. They exist on low visibility and subsistence thresholds and therefore, do not make a good media materials.

They have to travel long distance to secure justice which is expensive, time consuming and risk of road missharp. In urban areas litigants spend a lot of money on transportation as a result of continous adjournment of their cases by the court which is contrary to fair trial procedures. All these problems results in the unnecessary consumption of valuable time of litigants and as well as that of witnesses. This could be the reason why people are always reluctant to serve as witnesses in courts.

Therefore, dispensing of justice is not a "business" but a moral duty of every judge. It is very sad to note that our courts of law, instead of rendering the service of dispensing justice, should be turned into 'shop of law' whose doors are closed for the person who are not in a position to pay the price of their services.

If the Government bears the burden of police, army, education and health, why should it not finance the administration of justice? After all, the government exists with the avowed promise of securing justice between its citizens. The court should not be thought of as an avenue of increasing state revenue. For the main reason for the very existence of state to ensure every citizen equal legal justice in order to maintain order.

The administration of justice is not a business but a duty of which no fees should be charged so as not to close the door for the persons who are not in position to pay the price of their services. The Constitution shall makes it a duty on the state to finance the cost of administration of justice so as to guarantee equal legal justice to every citizen. Hence an important reform is needed, and that is the abolition of the court fees - system in this country.

6.2.9 DELAY OF COURT CASES

It is no more singing "justice delayed is justice denied' without taking the first step towards correcting the situation. The present slow process of judicial administration is frightening and oppresive. The poor feel the weight of the oppression of more than the rich. Litigants and criminals sometimes excape judgement, while, innocent citizen often suffer undue detention and prolonged imprisonment. Hardest hit in the society who are increasingly being sidelined by the poor and the high cost of justice. And because many connot afford the cost of justice. They have to literally rot in jail..

Delay in the services of court processes directly militate against justice. In civil matters lawyers and litigants alike have to go all out of their way to find and assist the bailiffs and other court officer in effecting service. Otherwise the summon might be held up for months or even years in some delay because of non - service of subpoena to vital witness. Some bailiffs complain of not being paid mileage or transport allowance

The nation legal system allows for much room for amendments which in turn abused by some legal counsels to cause delays. That many motions are brought purposely to delay and frustrate the course of justice. These are often in form of interlocutory injunction, substituted service and plea that, with possession of fresh information an adjournment would be required.

There is need to review complicated procedure and out dated rules which dot our legal system. Yet, it is not only the lawyers that should be blamed for the slow and expensive dispensation of justice; the plight of the magistrates and judges too is contributory. The lawyers, magistrates and judges are quite happy to continue to display their forensic skills which causes delay, but, at the expense of the poor litigants. We have to consider the procedure we are operating in the practice of legal profession.

It has been suggested that the poor condition of service is contributory to scandalous instances of corruptions dotting the nation judiciary. It appears that those in authority towards the control of area courts with their legal instrumentalities of transferring a court case to appellate court for which reason it can cause delay and connot enhance any search for true justice.

It is obvious that the poor training of the area court judges is perhaps the most potent singular enemy of justice in the area courts. It is acknowledged that few states, like Benue State,[13] have started attempts to increase the quality of staff to area court judges. In most states, however, the area court judges are not literate enough to appreciate the extent of their mandate under the area courts laws. In most states of Nigeria including all the states that run the area courts system, there are educational institutions

of continuing education to give these judges basic grounding in the demands of their office.

The law literacy thresholds of area court judges has, amazingly, been accommondated by the law. Basic procedual riqours have been waved for them. All that the law dose is to enjoin them to seek to achieve "substantial justice", an amorphous concept that is neither defined nor capable of definition. Again, by giving a chapter to the area courts to operate area courts civil procedure, the area courts laws create room for arbitrariness.

The judiciary should strive at all the time not only to see that area courts judges and the courts staff uphold the honour and dignity of the judiciary, but, also,to introduce seminars, workshops, conferences, symposia and other courses to them.

6.2.10 MINISTRY OF JUSTICE

The state ministry of justice need establish a machinery for taking control of the prosecution of cases in the area courts. The criminal jurisdiction of area courts be abolished. If they must, however, retain some form of criminal jurisdiction irrespective of the oppressive regime of procedure that, at present, holds away in their proceeding it must be in respect of very few offences attracting very mild sanctions.

If it is considered appropriate, in spite of the overwhelming cases against the present position, to retain the criminal jurisdiction of the area courts unaffected and unchanged, then they must be compelled to follow and apply the same rules of evidence and procedure as well as other courts administering criminal law in Nigeria. This is the only way to assure accused persons appearing before area courts of uniform application of those rules of fairness entrenched in our national constitution. While, the civil jurisdiction of area courts must, also, be re-assessed. for reasons similar to those given above, the civil jurisdiction of the area courts is considered too broad. There seems to be no really compelling reason why the monetory value of the claims over which area courts can adjucate must exceed that of magistrates courts (as District courts).

6.2.11 THE STATE JUDICIAL SERVICE COMMITTEE

The disciplinary control of the staff of the area courts is vested in the state judicial service committee.[14] The powers for this purpose are created and defined by area courts law as follows:-

> *"Subject to the provisions of any writting law, The judicial service commission may dismiss, suspend, or exercise disciplinary control over any judge or other*

member of the area court: (a) who shall appear to have abused his power or to be unworthy or incapable of exercising the same justly; or (b) For other sufficient reason." [15]

The above provision is necessary not only for purpose of understanding the nature and extent of the mandate of the state judicial service committee over the area courts, but, also,for being able to apportion responsibilities in respect of the violent and indiscriminate abuses of the judicial process.

However, the manner of the exercise of this power of discipline over staff of the area courts is not clear. Available cases seems to suggest a very limited role for the state judicial service committee in the actual control and discipline of area courts staff. True cases illustrate this point.

The first case originated in Sokoto State. It involved Mallam Abdullahi Bello Ahmed,a former deputy chief Inpector for area courts in Sokoto state. He was alleged to have recieved double salaries through fraudulent means between July and December, 1989. Through investigation, the Auditor General of the state, through the chief registrar of the state High court, wrote a querry to Mallam Ahmed asking for an explanation.

While, this process was still in progress, Mallam Ahmed was promoted to the position of Director of Research and planning in the state judicial service committee. An administrative committee was constituted comprising person outside the state judicial service committee. Alhaji Bello was subsquently retired compusorily from the judicial service of Sokoto State.

The second case is the dismissal of the staffs of area courts and magistrate courts in kano state sometime in the year 1994 by the executive is another conflict of power between the said executive and the state judicial service committee.

Therefore, there is a need to define the role of the executive and that of state judicial service committee in the control of area courts' personal.

CHAPTER SIX

NOTES AND REFERENCES

1 Hon. Justice S. Chiroma (Judge of the High Court of Kano State): "The Role of Area Courts in the Administration of Justice - the past, the present and the foreseeable future" (paper presented at the seminar organised by the Nigerian Bar Association, Kano branch, for Magistrates And Area Courts Judges, August, 5 - 6 1992.

2. Okonkwo C.O. (ed): "Introduction to Nigerian Law:" (London : Sweet and Maxwell, 1980) 70

3. Per Karibi - Whyte J.S.C. In Kuusu Vs Udom (1990) 1 NWLR 423 at 429

4. Rule 10 of the United Nations Basic Principles on the independence of the Judiciary.

5. National Judicial Workshop for Magistrates, Area Courts Judges and Customary Courts Judges from Kano Kaduna, Katsina and Jigawa States held at Kaduna from 13th June, to 17th June, 1994 of which I attended the conference as Magistrate from Kano State.

6. Nigerian Bar Association, Kaduna branch: Petition for the removal from office or revocation of the contract of Alhaji Abbas Maude, the Area Court Judge, Malali: Kaduna State. Ref: No NBA/ KD/ COR/One/20 of November 30th, 1987 at P4.

7. See letter of the Military Governor to the Chief Judge, Kaduna State; Ref: No.GIF/S/2/S.L/Vol.VII/300 of December 7th, 1987 personally signed by the then Military Governor, Kaduna State, Lt.Col. Abubakar Umar .

8. Meaning "God forbid" Obviously meaning in this way to state their objection to being addressed by a woman.

9. Nigerian Bar Association

10. Interview conducted in January, 1992.

11. (1974) SC 153 at 170 -171

12. Otherwise known as the doctrine of stare decisis. It is a judgement or decision of a court of law cited as an authority for deciding a similar set of fact on a case which serve as an authority for a legal principle embodied in its decision. The common law was developed by broadening down from precedent to precedent. " The only use of an authority or decided cases is the establishment of some principles which the judge can follow out in deciding the case before him." (per Sir George Jossel M.R. Hallet (1980) 13 Ch. P.712

13. Upper Area Court judges in Benue State of Nigeria are lawyers. Most others have basic training in law, some of them with a diploma in law.

14. Paragraph D, Part II, third schedule, Constitution of the Federal Republic of Nigeria 1979

15. S.6 (1) (a) (b) Area Courts Law, cap.9, Vol 1, Laws of the Kano State of Nigeria ,1991.

BIBLIOGRAPHY

PUBLISHED WORKS.

Abdul-Malik Bappa Mahmud (1988)	"Brief History of Sharia in the Defunct Northern Nigeria;" (Jos University, Press, Plateau State, Nigeria).
A. Obi Okoya (1979)	"Essays on Civil Proceedings," (Fourth Dimension, Publishing Co.Ltd, 179 zik Avenue, P.M.B. 1164, Enugu, Nigeria).
B.M. Shani, Director Institute of Administration, A.B.U, Zaria, Nigeria.	"Crimminal Procedure in the Northern States of Nigeria".
B.M. Shani, *Ibid*	"Some aspects of Criminal procedure in the Northern States of Nigeria." Afro-Asian and General Book Co., New Delhi. (Printing in India by

S.A. Dhawan of the General Electric.Press, B.P Kamar Nagar, Delhi, India 110 Co.7).

Cheshire and Fifoot (1976). "Law of Contract." Ninth Edition, (Butterworth and Co., 88 Kingsway, WC 2B, 6 A.B., London).

Civil Liberties Organisation (1992) "Justice Denied." The Area Courts System in the Northern State of Nigeria." (Kraft Books Limited, V.I. P.M.Box 22084, Ibadan. Oyo State, Nigeria).

C.O. Olawoye (1974) "Title to Land in Nigeria." (Evens Brothers Nigeria Publishers Limited, P.M.B. 5164, Jericho Road, Ibadan, Oyo State, Nigeria).

Cross and Jones (1980)	Introduction to Criminal Law." (Butterworth and Co., 88 Kingsway, W.C. 2B,6A.B., London).
Dantsoho Mohammed	"Zungeru." The Forgotten Capital of Northern Nigeria."
Dr,Kingsley I. Igweike (1980)	"Nigerian Commercial Law." (St Hambal and Co. Ltd, Lahore, India).
Fidalis Nwadialo. (1979)	"Mordern Nigerian law of Evidence." (Ethiope Publishing Corporation, Ring Road, Benin City, Edo State, Nigeria).
Fidalis Nwadialo (1987)	"The Criminal Procedure of the Southern State of Nigeria." (M.I.J. Professional Publishers Ltd., 37 Simpson Street, Ebute Matter,P.O.Box 209, Yaba, Lagos State, Nigeria).

Fridman (1975) "Law of Agancy" (Butterworth and Co.88 Kingsway, W.C.2 B. 6A.B., London).

Hammudah Abdul-Al-Ati (1982) "The family Structure in Islam," (Academy Press Ltd, Lagos, Nigeria).

Henry Compell Black M.A 1990 "Black's law Dictionary." 6th Edition, Centinary 1991, (West Publishing Co.St Paul Min. London).

Isam Ghanem 1975 "An outline of Islamic Jurisprudence." (Institute of Administration, Ahmadu Bello University, Zaria, Kaduna State, Nigeria).

J. Ola Orojo (1979) "Conduct and Etiguette of Legal Practitioners." (Sweet and Maxwell, London.

Keay E.A. and S.S. Richardson (1986) "The Native and Customary Court of Northern Nigeria." (Sweet and Maxwell, London).

Marvin Zalman (9/1/69) "Cases and Materials on Criminal Procedure and Evidence law." (Institute of Administration Ahmadu Bello University, Zaria, Kaduna State, Nigeria).

M.G.Yakubu (1986) "Notes on the land Use Act." (Institute of Administration, Ahmadu Bello University, Zaria, Kaduna state, Nigeria).

Obilade (1971) "The Nigerian Legal System." (Sweet and Maxwell, London)

Okonkwo C.O.ed (1980) "Introduction to Nigerian law." (Sweet and Maxwell, London).

Oluwatoyin Doherty (1990) "Criminal Procedure in Nigeria." (Law and Practice) (Blackstone Press Limited 9-15 Aldine street, W 12, 8 A.W. London).

Park (1963) "The Sources of Nigerian Law." (Sweet and Maxwell, London).

P.G.Osborn (1964) "The Concise law Dictionary." (Sweet and Maxwell, London).

Phipson "Law of Evidence."

Rupert Cross (1979) "Cross on Evidence." (Butterworth and Co., 88 Kingsway, W.C.2 B., 6A.B., London).

S.A. Adesanya (1973) "Laws of Matrimonial Causes." (Ibadan University Press, Oyo State Nigeria).

S.S. Richardson and T.H. William 1963. "The Criminal Procedure Code of Northern Nigeria." (Sweet and Maxwell, London).

T.Akinola Aguda (1964) "Principles of Criminal Liabilities." (Ibadan University Press, Oyo State, Nigeria).

UNPUBLISHED WORKS

Abdullahi T.(Chief Judge,) Jigawa State, Nigeria (1992) "The Juridiction of Magistrate and Area Courts and Abuse of Judicial Process." (Hereafter called" Abuse of Judicial Process.") Paper Presented at the Seminar organised by the Nigerian Bar Association, Kano Branch for Magistrate and Area Courts Judges on the Administration of Justice in the lower courts, August 5-6, 1992, P8.

Aboki A.(Judge) High Court Kano State, [1992] "The problems and €onstraints of Administration of Justice in the lower courts" Paper presented to

the Seminar organised by the Nigerian Bar Association, Kano Branch, for Magistrates and Area. Courts Judges, on the Administration of Justice in the lower Courts, August 5-6, 1992,P.25.

B.M. Shani, Director Institute of Administration A.B.U. Zaria (1992)

Lecture Notes on Civil Procedure. Delivered to students Persueing (LLM) Hons: Degree in Law. Faculty of law, Institute of Administration, A.B.U. Zaria, Kaduna State, Nigeria) (1992).

Debates (1959)

Northern Region of Nigeria Legislative Houses Debates in December 1959, . Chapter two, P.43

Debates (1956)

Northern Region of Nigeria House of Assembly Debates, March, 1956, P.309

Dr. Naiya Sada Dean faculty of law, ABU Zaria (1992)	Lecture Notes on Islamic Law of Marriage and Divoce delivered to students persuing courses Leading to (LLM) Hon: Master in law Degree, Faculty of Law, Institute of Administration, Ahmadu Bello University, Zaria, Kaduna state, Nigeria, 1992.
Haliru Abdullahi (Judge) High Court, Kano state of Nigeria (1994)	"Fair Hearing in Proceeding," A Paper Presented at the continuing Legal Education Work shop for Magistrates, Area and Customary courts Judges held at state House, Kaduna state, Nigeria, June 13-17 1994
M.T.Ladan, Lecturer, faculty of law A.B.U. Zaria, April, 1990	"Concept of Justice under Islamic law and its Relevance to Modern Nigeria." (LLM). Hons: Master in law Degree thesis, April, 1990

Faculty of law, Institute of Administration, Ahmadu Bello University, Zaria Kaduna state, Nigeria.

O.Olaturi, Lecturar
Nigeria Law School, Lagos.
1989

Synopsis of Lecture on Civil Proceedure. (Council of Legal Education, Lagos, Nigeria) Publishers. Printway House, Lagos Nigeria.

Sani Idris, Lecturar, Faculty of law A.B.U. Zaria (1992)

"Parent-Child Relationship under Islamic Law." (LLM) Hons: Master in law Degree Thesis, 1992. Faculty of law, Institute of Administration, Ahmadu Bello University, Zaria, Kaduna State, Nigeria.

S. Chiroma, (Judge) High Court, Kano state Nigeria (1992)

"The Role of Area Courts in the Administration of justice-the past-the present and the foreseeble furture." Paper presented at the Seminar

organised by the Nigerian Bar Association, Kano Branch for Magistrates and Area Courts Judges, August 5-6, 1992.

S.U. Minjibir, (Chief Judge, Juduciary, kano state, Nigeria [1992]

"Code of Conduct, Judicial Ethic and Discipline." A Paper Presented at a Continueing Legal Education Workshop for Magistrates and Area Court Judges held at state House Kano State, Nigeria, August 5-6 1992.

United Nations Organisation (U.N.O.)

"United Nations Basic Principles on the Independence of the Judicary."

Usman . Y, Legal Practitioner. [1958]

"Administration of Justice in the Area Courts." (hereafter Called. "Justice in the Area Courts,") Paper delivered during the law week of the Nigerian Bar Association

(N.B.A.) Kaduna Branch, 17th March, 1988, P.20.

Yusufu Dankofa,(Lecturar,) faculty of law, A.B.U. Zaria (1993)

"The Role of Nigerian Courts in the Dispensation of Justice," (LLM) Hons: Master in Law Degree Thesis, April, 1990. Faculty of Law, Institute of Administration, Ahmadu Bello University, Zaria, Kaduna State, Nigeria.

APPENDIX A

THE AREA COURT EDICT 1967

AREA COURT WARRANT

WARRANT establishing the ..... Area Court in Kano State.

I .....Chief Judge of Kano State in exercise of the power conferred upon me by section 3 of the Area Courts Edict, 1967 do hereby, with effect from .....day of .....19 ..... establish a ..... Area Court, having the membership herein specified and which shall exercise its jurisdiction within the area to the extent herein specified, and I assign to it the name of .....Court.

MEMBERSHIP

The Court shall consist of

an Area Court Judge sitting alone

JURISDICTION

The Court shall exercise the jurisdiction conferred upon it by the Area Courts Edict, 1967.

(a) Within the area of .....

.....

(b) In civil and criminal proceedings.

GIVEN under my hand this ..... day of .....19 .....

.....

CHIEF JUDGE

APPENDIX B

Revenue Generation And Monitoring
Committee, Kano State Judiciary.
16th February, 1996

To Secretary Judiciary Service Committee,

Directors,

Magistrates,

Upper / Area Court Judges,

Registrars,

Revenue Officers,

Internal Auditors,

Resident Auditors.

REVISED REVENUE RATES FOR KANO - STATE JUDICIARY

I am directed to write and inform you that, in conformity with the power confered upon him by section 3 of the Kano State High court Civil Procedure (Amendment) Edict 1994, the honourable Chief Judge and Chairman Judicial Service Committee has approved the revised revenue rates for the State Judiciary with effect from the 1st day of march, 1996.

It is important to note that, in 1995 the approved revenue target for the State, Judiciary stood at N10,000:000.00 while the expected revenue for the current year is N17,000:000.00k.

Therefore, I crave for your kind indulgence to the attached new (Revised) rates for implementation with effect from 1st March, 1996.

With kindest regards,

(.....)

ALH BALA A. SANDA

for CHIEF REGISTRAR.

NEW COURTS FEES AND FINES CHARGEABLE FOR KANO STATE JUDICIARYWITH EFFECT FROM 1 st MARCH 1996.

		NEW RATE
1.	All summons for claims of recovery of goods, money or landed property	12%
2.	All summons for other reliefs including petition for divorce	N50.00
3.	Any other application whether interlocutory or otherwise and or any order whatsoever.	N50.00
4.	Service fees per kilometer.	N 5.00
5.	Service fees per day	N50.00
6.	Wit. ness summons.	N20.00
7.	Fees for every copy of proceeding per 200 words or parts thereo.	N25.00
8	Fees for inspection of court records	N20.00
9	Fees for inspection of land.	N100.00
10	Fees for Certificate of divorce.	N100.00
11	Appeal out of time	N50.00

12	Appeal out of time.	N70.00
13	Issue of summons for distribution of Estate.	N50.00
14	Writ of possession form 1 & 15	N100.00
15	All cheques Exchange Deposit Processing and Auction sales	5%
16	Affidavit of means on all applications for bail including form 18	N50.00
17	Petition and complain to offices of Hon. CJ, Hon. CR and others	N50.00
18	Affidavit of all category	N50.00
19	Declaration of Age	N50.00

KANO STATE HIGH COURT CIVIL PROCEDURE

(AMMENDMENT EDICT 1994)

FIRST SCHEDULE

FEES PAYABLE AND ALLOWANCES TO WITNESS IN THE HIGH COURT:

PART 1: FEES PAYABLE

FEES PAYABLE IN THE HIGH COURT ON COMMENCEMENT OF CAUSES OR MATTERS (ORDER 54, RULE 1)

1.	**CAUSES OR MATTERS**		**FEES**
	(a)	From the recovery of the sum from N10,000 to N50,000	12%
	(b)	From N50,000 and above	15%
2.	**FOR POSSESSION OF PROPERTY AS BETWEEN LAND LORD AND TENANT:**		
	(a)	Where the annual rent or value does not exceed N25,000.00	15%
	(b)	Where it exceed N25,000.00 per N1,000.00 or part thereof	15%

3. **FOR A DECLARATION OF TITLE ON LAND AND POSSESSION OF LAND OTHER THAN AS BETWEEN LAND LORD AND TENANT:**

(a) Per N2,000 or part thereof the annual rent or value 15%

(b) Where no annual rent or value can be specified N3,000.00

(c) Maximum fees N5,000.00

4. **FOR POSSESSION OF PROPERTY (OTHER THAN AS BETWEEN LAND LORD AND TENANT AND OTHER THAN LAND) AS UNDER ITEM 1 ON THE SUM CLAIMED IN LIEU OF PROPERTY.** 15%

5. For the administrtion of the property of a deceased persons where there is no dispute regarding succession or distribution.

(a) Where the gross value of the property does not exceed N1,000.000 10%

(b) Where it exceed N1,000.00 for every N2,000.00 10%

(c) Where no value can be specified/maximum fee. N5,000.00

6. For the administration of the property of persons of unsound mind:

Same as under item 5 10%

7. For the determination of a question relating to the distribution of or the succession to the property of a deceased person, or to a trust whether the person who created the same is dead or alive. 10%

(a) Where the gross value of the property of the deceased or the property under trust does not exceed N1,000.00 10%

(b) Where it exceed N1,000.00 per N2,000.00 or part thereof 10%

(c) Maximum N300.00

8. For any other relief or assistance not specifically provided for N250.00

NOTES ON ITERM 1 TO 8:

(a) Iterm 1: Save where the claim is for an account to be taken, the sum claimed as debt or damage shall be specified.

(b) Item 3: The annual rent or value to be specified shall be that which is payable under the lease granted to the tenant sued or the lease last granted to any person before the bringing of the action, which ever be the greater. If it is something other than money, whether wholly or in part, its nature and annual value shall be specified.

(c) Item 4: (1) Note (b) shall apply to Item 4: (ii) if so lease was over granted in writing no annual rent or value shall be specified.

(d) Item 6: and 7: If the gross value of the property has not been estimated, no value shall be specified.

(e) Item 8: (1) Note (d) shall be apply. (ii) Item 8 covers claims (other than claims by creditors) affecting trusties, excutors, administors, heirs, legatees, or other beneficiaries as betweenn any of the aforesaid, but if no question is raised regarding to the construction of a deed or will, or distribution or succession, the court may order the fee to be reckoned under Item 1 or 5 and any exceed charged to be refunded.

(f) **GENERAL:**

(1) If the annual rent or value or the gross value of property was under-stated, the court may order the balance of the fee chargeable to be paid and if it was understated knowingly, or negligently the court may also order a sum equal to such to be paid as a penalty, In either case the court may direct that the proceeding shall not continue untill the balance and if an annual rent or value or gross value was state, where it should not have been.

(ii) If a flat fee was paid because as annual rent or value or gross value could be stated, the court may where the value is small or the time taken short, order apportion of the fee to be refunded but to that balance left shall not fall below N50.00.

(iii) Where two or more claims are join highest fee, under any relevant item shall be charged and in addition three fifth of the fee under any other provided that N6.00 only shall be

the fee under any other provided that N6.00 only shall be charged on a claim for injunction joined to any other claim.

(iv) A set off or counter-claim shall be charged as if an action therefore were taken.

(v) If before the hearing begins the claims are admitted or settled, the court may order one half of the fees charged item 1 to 9 to be refunded.

(v) Where a case is adjourned through a party's fault, such party may be ordered to pay one half of the fees charged under item 1 to 9 before the case is set down again.

(vii) Paragraph (vi) shall apply to the setting down of a case which was struck out or to the responding of the case in which judgement was given by default, including judement in case in the underfended list where no notice or defence was filed in time.

MATRIMONIAL CASES

9.	For only petition (other than alimony)	N200.00
10.	For the first petition	N50.00
11.	For any subsequent petition	N50.00
12.	For a petition for alimony	N200.00
13.	For the registrar's Certificate	N100.00
14.	For any application for decreee a absolute	N100.00
15.	For setting down the case for hearing	N100.00

LEGITIMACY CASE:

16.	For the petition	N200.00
17.	For a seal decree or copy thereof	N100.00

PROBATE ADMINISTRATION

18.	On drawing up on administration decree	N200.00
19.	On drawing up order as further consideration where the property administer exceed N1,000	N150.00
20.	On filing an application for probate or admin.	N100.00
21.	On filing oath or executor or administrator	N100.00
22.	On taking justification of sureties for each surety.	N100.00
23.	On filling administration bond	N100.00
24.	On entering a cavent	N200.00
25.	On every warning to a cavent	N200.00
26.	On probate or letters of or order for administration where the value of the property affected by the grant or order	10%
	a. Does not exceed N100.00	10%
	b. Exceed N100.00 but not N[illegible]00.00	10%
	c. For each additional N100 or part thereof	10%
27.	For a reseal in grant so as to bring it into force in northern Nigeria: a fee resealing under item 26 on the valve of the property in Northern Nigeria affected by the resealing	10%
28.	On inventory takes by a court officer;	
	a. For the first hour or part thereof	N100.00
	b. For every subsequent loan or part thereof	N100.00

29.	On application to seek index to grant of will or to inspect a grant or will	N100.00
30.	On deposit or will for safe currency	N200.00

APPLICATION, AFFIDAVIT, JUDGEMENT ORDERS, SECURITY BONDS, WARRANTS AND WRITS

31.	On application or warrant to detine a ship		N2,000.00
32.	On application for a writs of habeas carpus		N2,200.00
33.	On filing any motion		N150.00
34.	On filing any		
	a.	If alone	N150.00
	b.	each annexture to the motion	N20.00
35.	a.	On filing an affidavit	N50.00
	b.	Affidavit and Declaration	N50.00
36.	On filling a security bond		N100.00
37.	On filling any other paper		N50.00
38.	On justification of sureties for each surety		N50.00
39.	For the issue of warrant to detain on absconding defendant or a ship.		N2,000.00
40.	For the drawing up of any order or judgement		N100.00
41.	For a special interpreter or a language not in common use per day or part thereof, as the court may order but not exceeding		N100.00
42.	For an inquiry by a court Officer where so ordered for each sitting		N100.00

43.	For an account taken by a court officer where so ordered per N100.00 or part thereof found to have been received.	N20.00
44.	For an account taken by court officer where so ordered per N100.00 or part thereof found to been received.	
45.	For taking down a person's statement where so ordered as the court may direct but not exceeding	N50.00
46.	For searching the archives for each day	N200.00
47.	For drawing up a bill of cost where so directed per folio of 72 words	N20.00
48.	For taxing costs where so ordered per N10.00 or part thereof.	N50.00
49.	For preparing a copy or a photo copy where authorised per polio of 72 words	N50.00
50.	For every subpoena	N100.00
51.	On commission to give evidence	N50.00
52.	On commission to take evidence	N50.00
	(a) Within the jurisdiction of the court	N50.00
	(b) Outside the jurisdiction of the court but within the Federation	N100.00
	(c) Outside the Federation of Nigeria as the court may order but not exceeding.	N200.00
53.	For attesting the execution or signature of an instrument not otherwise provided for	N100.00
54.	For swearing an affidavit or making a declaration (other than under section 2)	

	of the sales by action or the marriage act or one required by the regulation of a Government Department) per deponent.	N50.00
55.	For making any paper annexed to an affidavit or declaration	N20.00
56.	For sealing any document not in a proceeding each	N200.00
57.	For certifying a copy as a true copy per polio of 72 words or part thereof	N100.00
58.	For payment into court except when ordered by the court or proceeds of execution	
	a. Not exceeding N100 per N20 or part thereof	5%
	b. Exceeding N100.00 or part thereof	
59.	On appointment of a commissioner to administer Oaths and take declaration (not being a Govt. Off.)	N2,000.00
60.	For sealing a letter of request	N100.00
61.	On transfer of a foreign judgement	N1,000.00
62.	For certificate of service reign process (where not disallowed by convention)	N5,000.00
63.	On every petition to the chief Judge or a Judge or Chief Registrar (not being an application otherwise provided for) unless ordered by a judge or the cheif Registrar.	N50.00
64.	For the service of any document or process initial fee plus the following transport rates:	
	a. If within a kilometer from the court	N50.00
	b. If beyong one Kilometer	N100.00
	I. For the first kilometer	N50.00
	ii. For each subsequent kilometer from the court	N50.00

NOTES:

Where a service is rendered by a person who is not officer of the court or in the service of the Government or of a Local Government or a tribunal, the court may direct that the fee be paid for such service out of the revenue to the person who has rendered the service.

For the performing of any other duty not herein expressly provided for, the officer may receive a such fee as the court may allow.

TRANSFER OF CASES:

65. On an application to transfer a civil case before the High court from one judge to another,or to a district or Area court, where tha application is allowed to be made orally at the hearing of the case. N100.00

66. On an order transferring a civil case before the High court from one judge to another, or to a district or area court, where the order is made on the application of a party. N100.00

67. On an application to the Chief Judge or a Judge to transfer a civil case from or district court to another within the same district. N100.00

68. On an order transferring a civil case from one district court to another court or the High court or from one magistrate to another within the same district where the order is made on the application or a party, the difference between the fee paid from instituting the case in the district court or area court and the fee which would have been

charged had the case been instituted in the High court in the first instance or N30.00 which ever be the greatest. N100.00

PART II

ALLOWANCES TO WITNESSESS:

a.	Persons earning N5,000 per annum and above	N100.00
b.	N2,000 per annum and less than N5,000	N75.00
c.	N1,000 per annum and less than N2,000	N50.00
d.	N500 per annum and less than N1,000	N30.00
e.	N300 per annum and less than N500	N225.00
f.	3 less than N300	N20.00

TRANSPORT ALLOWANCES

The following transport allowances shall be considered:

a.	Transport by party	N5.00

NOTES:

The travelling expenses of witnessess shall be allowed according to the same reasonably and actually paid.

No allowances shall be made to an officer of the public service who is summoned as a witness by the state or by any department of Government. All other causes shall be costs and travelling expenses as if not in the public service. fees, cost and expenses payable to an officer in the public service shall be paid into revenue unless otherwise ordered.

ORDER XII RULE 4

1. On the issue if every writ of interim attachment:-
   a. Where the amount in dispute does not

		exceed N50,000.00	N200.00
	b.	Where the amount in dispute exceed N50,000.00	N500.00
2.	On the issue of every write of execution, where tha amount of the judgement debt, or the value of the property to be recovered, or the sum of such amount and value		
	a.	Does not exceed N5,000.00	N100.00
	b.	Exceeds N5,000 but not N20,000	N200.00
	c.	Exceeds N20,000 but not N50,000	N300.00
	d.	Exceeds N50,000	
3.	For execution of every writ		
	a.	For not more than N2,000.00	N100.00
	b.	For more than N2,000.00	N200.00
4.	For the man in possession per day		N100.00
5.	Sheriff's expenses of sale, where the property sold produces:-		
	a.	N50,000.00 or less	10%
	b.	More than N100,000.00	8%
	c.	Less than N100,000.00	5%