**ABDUN KAKA**

**v.**

**MALAMI NAGWANJA**

COURT OF APPEAL KADUNA JUDICIAL DIVISION

8TH FEBRUARY 2001

CA/K/229/S/96

**OTHER CITATIONS**

3PLR/2001/7 (CA)

(2001) 9 NWLR (Pt.717)124

**BEFORE THEIR LORDSHIPS**

MURITALA AREMU OKUNOLA, JCA

MAHMOOD MUHAMMED, JCA

SAIFULLAHI MUNTAKA-COOMASSIE, JCA

**ORIGINATING COURT**

**1.** KEBBI STATE SHARIA COURT OF APPEAL HOLDEN IN BIRNIN KEBBI

2. UPPER AREA COURT BIRNIN KEBBI

2. AREA COURT, GWANDU, BIRNIN KEBBI

**REPRESENTATION**

Appellant in person

Respondent in person.

**ISSUES FROM THE CAUSE(S) OF ACTION**

RELIGION AND LAW – ISLAMIC LAW AND LAND DISPUTES:- Rule that evidence of a near relative of a party is inadmissible if there is suspicion that the witness derives some benefit from such evidence – Duty of court to impeach such witnesses on the ground of relationship and bias as interested parties - Admissibility of evidence of witness deemed impeached – Legal effect

RELIGION AND LAW – ISLAMIC LAW AND LAND DISPUTES:- Civil proceedings – Proof of title to land by way of gift under Sharia/Islamic Law – Burden of proof – Where party has only one witness unimpeached instead of two – Whether land can be affirmed to him if witness takes the complementary oath

REAL ESTATE AND PROPERTY LAW - LAND – DISPUTE OVER LAND UNDER SHARIA/ISLAMIC LAW:- Land acquired by way of gift – How proved – Farm land acquired under a lease – Effect of failure to pay rent and denying title of landlord

CHILDREN AND WOMEN LAW:- *Women and Justice Administration/Religion* - Burden of proof under Islamic law – Rule that proof under Islamic Law is discharged by evidence of 2 male unimpeachable witnesses or evidence of one male witness and two or more female unimpeachable witnesses – Attitude of court thereto – Effect

ESTATE PLANNING/ADMINISTRATION - WILLS AND ESTATE – Demise of property by the deceased – Where there is no will or written document – Effect - Proof of ownership of land under Islamic law

ETHICS:– No legal representation of parties – Duty of court thereto

FOOD AND AGRICULTURE LAW – DISPUTE OVER FARM LAND:- Land acquired by way of gift under Islamic law – How proved – Refusal to pay rent on demand for longstanding farm - Consequence

**PRACTICE AND PROCEDURE ISSUE**

APPEAL:– Failure of parties to file brief of argument - Effect

COURT – EVIDENCE:- Treatment of appeal from Sharia Court of Appeal – Where parties had not used legal practitioner at any stage of the proceedings – Duty of court to review records of courts below

EVIDENCE:– Admissibility of evidence – Evidence deemed impeached under Islamic law rules relating to interest to land – Duty of Court

PRACTICE AND PROCEDURE – PLEADING:– Failure to file a brief of argument – Effect of

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The Appellant/Plaintiff, sued the Respondent/Defendant claiming title over the two farms at issue on the basis that they originally belonged to his grandfather but were rented to the father Respondent/Defendant by a relation of the Appellant/Plaintiff for farming purposes in consideration of the payment of an annual due. The respondent denied the appellant’s claims and asserted that he inherited the farms from his father with one of them originally deforested by the father and the other given to him by way of gift. Both called witnesses in proof of their claim. At the end of trial, the trial Area Court held that the appellant has successfully impeached two of the 3 witnesses called by the respondent leaving one. The court held that since 8 witnesses are more than one, the farms be affirmed to the plaintiff/appellant. Dissatisfied with this judgment of the Area Court, the respondent herein appealed to the Upper Area Court III, Birnin Kebbi. After hearing the parties and going through the records, Upper Area Court Birnin Kebbi affirmed the judgment of the trial Area Court, Gwandu, after giving oath to the appellant’s representative, Labaran that these were rented to the father of the respondent by Sarkin Fawa Abdu.

Dissatisfied with this Upper Area Court III, Birnin Kebbi’s decision, the respondent appealed before the Sharia Court of Appeal, Kebbi state, Birnin Kebbi.

DECISION(S) APPEALED AGAINST

The Sharia Court of Appeal held that:-

1. the Upper Area Court was in error to have accepted the evidence of Sarkin Fawa Sani, Malami Sarkin Fawa, Umaru Mekan as those of unimpeachable male witnesses since they are relatives of the plaintiff/appellant being his co-heirs. Even if the defendant/respondent did not impeach their testimonies, the trial Area Court should not have accepted such evidence as this is contrary to Islamic law principle which provides that the testimony of a relation is not acceptable.

2. since the respondent was left with one unimpeachable male witness to prove the fact of the gift of the second farm to his father, giving oath to him would complete the required evidence under Islamic law to confirm the gift to him.

3. Appeal allowed in part. The farm on the road to Amore confirmed to the defendant/respondent after taking the oath to complete the evidence of his one witness Mamman Dodo Dawa and the Rogo farm confirmed to the plaintiff as decided by the lower court.

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT(S):*

a. The decision of the Sharia Court of Appeal Birnin Kebbi was unjustified and unwarranted having regard to the weight of evidence.

b. The oath administered by the Sharia Court of Appeal Birnin Kebbi has no basis.

c. The Sharia Court of Appeal erred when it relied upon the testimony of only witness of the respondent who was unimpeached.

d. More grounds will be adduced at the hearing of the appeal.

*BY RESPONDENT(S)*

[Did not file any brief and therefore did not formulate any issue for determination of the appeal.

*AS ADOPTED BY COURT*

Whether the decision of the SCA accords with laid down principles of Islamic Law with particular reference to:

1. Whether the oath administered by the SCA to the respondent has any basis.

2. Whether the SCA erred when it relied upon the testimony of the only witness of the respondent who was unimpeached.

3. Whether the three witnesses of the appellant were rightly impeached under Islamic Law.

4. Whether the appellant rightly proved his case in respect of the other farm.

DECISION OF COURT OF APPEAL

1. The respondent in proof of his counterclaim after impeachment of two of his three male witnesses was left with one unimpeachable male witness. Consequently, before affirming the gift to him he was rightly invited by the SCA to take the complementary oath. Thus the SCA was in order when it affirmed the gift of the land to the respondent on the basis of the evidence of his one unimpeachable witness with the complementary oath.

2. In a similar vein the other farm was rightly affirmed to the appellant on the basis of the evidence of 4 unimpeachable male witnesses and I so hold.

3. The appeal lacks merit and it is dismissed. The judgment of the Sharia Court of Appeal is hereby affirmed. The farm on the road to Amore is awarded to the defendant/respondent while the Rogo farm is awarded to the appellant.

**MAIN JUDGMENT**

**MURITALA AREMU OKUNOLA, JCA (Delivering the leading judgment):**

This is an appeal against the judgment of the Kebbi State Sharia Court of Appeal holden in Birnin Kebbi delivered on 31/7/96. The fact of this case which had been laid out in the Kebbi State Sharia Court of Appeal judgment are briefly as follows:

The appellant herein as plaintiff, sued the respondent herein as defendant claiming as per page 1 of the records thus:

"I, Abdullahi Kaka Amore is suing Malami Nagwanja over the issue of my 2 farms rented to his father by my relation Sani Sarkin Fawa. These farms were deforested by my grandfather Garba Ara and after his death my father Dodo inherited the farms, later we migrated to Bela but after the death of my father I return. I inquired about these farms and was told by my relation that he rented the farm to the deceased respondent’s father now they are under the care of the respondent. Thus I was pleaded to let him continue working in the farm and he will continue giving the annual due. I said I will have to consult my brothers since the farm was under inheritance and the estate was not yet distributed among the heirs. After they were consulted they agreed to whatever was decided. Therefore, I told Malami that the farms were now under his rented title and he should continue giving the annual due to Sani Sarkin Fawa who will give me and I will divide it into 2, take half and give the rest to the other relations.

However, last year he refused to give anything and when Sani Sarkin Fawa asked him he said he will not give. They later told me of this and I invited the respondent before the Magajin Amore (village head) he said he knew the farms belonged to my father but if I want the farms we should meet in the court. I sued him at Area court Dalijan, but he sold the farms to the Judge at the cost of N6,000.00. Therefore I reported this to Birnin Kebbi and the case was referred to U.A.C. Gwandu. The issue was decided to be retried in this court, Area Court, Gwandu. However, the appellant repeated his claim before the trial Gwandu Area Court."

The respondent also denied that what the appellant claimed was not true since he inherited the farms from his father Manu Kure in the last 73 years before he died 30 years ago and no one has ever objected that the farm belong to him until now. The respondent added that one of the farms was deforested by his father on the permission of Dikko Alu while the other farm was a gift to his father by Sarkin Fawa Sani. The Area Court asked the appellant to present witnesses over his assertion. He said he has witnesses but he wished to present his son Labaran Abdu to represent him. On this note the court assigned the farms to be measured. The farms on Amore Road, East to West measured 250ft while South to North measured 190ft East in boundary line with Abdu Kaka, West with Muhammadu Dodo, South with the Road and North Alhaji Umaru. Second farm – the Rogo farm, East to West measured 500ft. South to North measured 240ft. From the East in boundary with Umaru, West with Bagudu Boara, South with Sarkin Fawa, and North with Road.

PW1 – Sarkin Fawa Sani, 50years old testified that the farm on the road to Amore was given as a gift by Dodo to Manu Kure because he is marrying his grand-daughter. And the farm at Rogo was given to the respondent’s father by Sarkin Fawa. Respondent did not agree with this testimony because the farm was a forest given to his father by Dikko Alu, PW2 – Malami Sarkin Fawa – testified that his grandfather rented the farm to Manu Kure. The respondent did not agree with the testimony because the farm was given to his father by Dikko Alu.

PW3 – Umar Makan, 45years old.

PW4 – Muhammadu Magaji Amore 80years old.

PW5 – Mamman Danyaya, 80years old.

PW6 – Umoru Amci Awo, 60years old.

PW7 – Haliru Sarkin, 65years old.

PW8 – Hassan Manuga all testified in support of the claim of the plaintiff/appellant. The respondent attempted to impeach the testimonies of the witnesses save PW5 and PW8 on grounds of relationship. On the counter claim of the defendant/respondent that Sarkin Fawa gave the farm to the respondent’s father as a gift, the court invited the respondent to call witnesses in proof of same.

Consequently, the respondent called 3 witnesses namely –

DW1 Gado Nwa – 80years old who testified to the effect that Sarkin Fawa gave the farm to the respondent’s father as a gift. He testified further that the farm was deforested by Manu Kure on the permission of Dikko Alu. The appellant called witnesses to impeach the DW1 on the ground that he was not in good terms with the witness.

DW2 – Mamman Dodo Dawa, 75years old supported DW1 when he stated that the 1st farm was given as a gift to the respondent’s father by Sarkin Fawa while the second farm was given to Manu Kure by Dikko Alu.

On the other hand, DW3 said he knew only the farm on the way to A more where the father of the respondent had been working but that he did not know how he got title of the farm. The appellant also attempted to impeach DW2 AND 3 on grounds of relationship with the respondent. At the end of trial, the trial Area Court held that the appellant has successfully impeached two of the 3 witnesses called by the respondent leaving one. The court held that since 8 witnesses are more than one, the farms be affirmed to the plaintiff/appellant. Dissatisfied with this judgment of the Area Court, the respondent herein appealed to the Upper Area Court III, Birnin Kebbi. After hearing the parties and going through the records, Upper Area Court Birnin Kebbi (hereinafter referred to as U.A.C.) affirmed the judgment of the trial Area Court, Gwandu, after giving oath to the appellant’s representative, Labaran that these were rented to the father of the respondent by Sarkin Fawa Abdu.

Dissatisfied with this U.A.C. III, Birnin Kebbi’s decision, the respondent appealed before the Sharia Court of Appeal, Kebbi state, Birnin Kebbi with his grounds of appeal as follows:-

1. I am dissatisfied with the decision of the lower court because I inherited the farms from my father 104years ago and no one has ever objected.

2. No one in the respondent’s family has ever worked in these farms.

However, the respondent objected to what the appellant alleged saying that it was Sarkin Fawa who rented the farm to Manu Kure i.e. the appellant’s father and he paid the yearly due to the family. After the parties deliberated and taking cognisance of the lower court’s copies of proceedings, the Sharia Court of Appeal held thus:-

That the U.A.C. was in error to have accepted the evidence of Sarkin Fawa Sani, Malami Sarkin Fawa, Umaru Mekan as those of unimpeachable male witnesses since they are relatives of the plaintiff/appellant being his co-heirs.

The court held that even if the defendant/respondent did not impeach their testimonies, the trial Area Court should not have accepted such evidence as this is contrary to Islamic law principle which provides that the testimony of a relation is not acceptable. See Book of Bulgatussalik vol. II page 327. The court further held that since the respondent was left with one unimpeachable male witness to prove the fact of the gift of the second farm to his father, giving oath to him would complete the required evidence under Islamic law to confirm the gift to him. Consequently, the appeal was allowed in part. The farm on the road to Amore was confirmed to the defendant/respondent after taking the oath to complete the evidence of his one witness Mamman Dodo Dawa, the court affirmed the Rogo farm to the plaintiff as decided by the lower court.

Dissatisfied with this judgment of the S.C.A., the appellant herein has appealed to this court on the following four grounds that:

a. The decision of the Sharia Court of Appeal Birnin Kebbi was unjustified and unwarranted having regard to the weight of evidence.

b. The oath administered by the Sharia Court of Appeal Birnin Kebbi has no basis.

c. The Sharia Court of Appeal erred when it relied upon the testimony of only witness of the respondent who was unimpeached.

d. More grounds will be adduced at the hearing of the appeal.

RELIEF SOUGHT FROM THE COURT:

i. An order setting aside the decision of the Sharia Court of Appeal, Birnin Kebbi.

ii. An order affirming the decision of both U.A.C. Birnin Kebbi and Area Court, Gwandu.

Neither of the parties filed a brief of argument, nor were they represented by counsel. Thus on 9/11/2000 when this appeal came up for hearing, the parties appeared in person and argued the appeal by themselves. Each of the two parties adopted and relied on his case as presented at the Area Court, Gwandu, Upper Area Court Birnin Kebbi and Kebbi State Sharia Court of Appeal as contained in the records of proceedings including the notice and grounds of appeal filed herein stressing that he has nothing to add. In conclusion, the appellant in person urged the court to allow the appeal while the respondent in person urged the court to dismiss the appeal.

I have considered the case of the parties as presented in the three lower courts vis-à-vis the records and the prevailing law. I want to stress that I have made a comprehensive review of the facts of this case as they took place in the three lower courts and in this court so as to give a clear picture of the case. This is moreso as both parties did not file their briefs and had to rely on the record of proceedings including their notice and grounds of appeal in addition to their addresses before us. Be that as it may, it is my considered view that the main issue for determination from my consideration of the grounds of appeal and the arguments of the parties vis-à-vis the records and the prevailing law is as follows:

Whether the decision of the SCA accords with laid down principles of Islamic Law with particular reference to:

1. Whether the oath administered by the SCA to the respondent has any basis.

2. Whether the SCA erred when it relied upon the testimony of the only witness of the respondent who was unimpeached.

3. Whether the three witnesses of the appellant were rightly impeached under Islamic Law.

4. Whether the appellant rightly proved his case in respect of the other farm.

Issues 1, 2 and 4 border on burden of proof under Islamic Law and they will be taken together. I shall deal with issue No. 3 first. On issue No. 3 touching on whether the evidence of a relative is admissible under Islamic Law, I need to state that this poser had come for determination and resolution by the Supreme Court in several cases to the effect that generally under Islamic Law, the evidence of a near relative of a party is inadmissible if there is suspicion that the witness derives some benefit from such evidence. In the instant case the 3 co-heirs of the plaintiff/appellant were rightly impeached by the SCA. This is also applicable to the two witnesses of the respondent who were rightly impeached on the ground of relationship and bias. Since they were interested parties, they were rightly impeached by the SCA and their evidence became inadmissible. See Sule v. Hamidu (1988) 4 NWLR (Pt. 90) 516 page 522 rightly referred to in HADA V MALUMFASHI i (1999) 7 NWLR (Pt. 303) 1 pp. 17-18.

On issues 1, 2 and 4 dealing with burden of proof under Islamic law, this poser had come for determination by the appellate courts in this country to the effect that proof under Islamic Law is discharged by:

a. Evidence of 2 male unimpeachable witnesses or

b. Evidence of one male witness and two or more female unimpeachable witnesses or

c. Evidence of one male or two female or more witnesses with claimant’s oath in either case.

In the instant case the respondent in proof of his counter claim after impeachment of two of his three male witnesses was left with one unimpeachable male witness. Consequently before affirming the gift to him he was rightly invited by the SCA to take the complementary oath. Thus the SCA was in order when it affirmed the gift of the land to the respondent on the basis of the evidence of his one unimpeachable witness with the complementary oath. In a similar vein the other farm was rightly affirmed to the appellant on the basis of the evidence of 4 unimpeachable male witnesses and I so hold. See Baba v. Aruwa (1986) 5 NWLR (Pt. 44) 774 p. 786 referred to in Hada v. Malumfashi (supra) p. 17 (paragraphs E-G)

In consequence the two group of issues flowing from the basic issue in this appeal are hereby resolved in favour of the respondent. On the whole, I have come to the conclusion that the appeal lacks merit and it is dismissed. The judgment of the Sharia Court of Appeal is hereby affirmed. The farm on the road to Amore is awarded to the defendant/respondent while the Rogo farm is awarded to the appellant.

Parties to bear their own costs.

***MAHMOOD MUHAMMAD, JCA.:***

I have had the opportunity of reading in draft, the leading judgment of my brother Okunola JCA and I agree with his reasoning and conclusion that the appeal fails and I too dismiss it.

I affirm the judgment of the Sharia Court of Appeal. I abide by the order for costs.

***SAIFULLAHI MUNTAKA COOMASSIE, JCA.:***

I have had the benefit of reading in advance the judgment just delivered by my learned brother Okunola JCA.

I entirely agree that the appeal lacks substance and it is accordingly dismissed with order as to costs awarded by him the lead judgment.

Cases cited in the judgment

Baba v. Aruwa (1986) 5 NWLR (Pt. 44) 774.

Hada v. Malumfashi (1999) 7 NWLR (Pt. 303) 1 pp. 17-18.

Sule v. Hamidu (1988) 4 NWLR (Pt. 90) 516.