

CHAPTER 126 - SHARIA COURT OF APPEAL

A LAW TO ESTABLISH A SHARIA COURT FOR THE HEARING OF APPEALS FROM AREA COURTS IN CASES GOVERNED BY ISLAMIC PERSONAL LAW, AND FOR MATTERS ANCILIARY THERETO

[30 *September* 1960]

Preliminary

1. This Law may be cited as the Sharia Court of Appeal Law.

2. In this Law:-

"area court" means a court established or deemed to have been established under any Area Courts Law;

"cause" includes any action, suit or other original proceeding between a plaintiff and a defendant;

"Chief Registrar" means the Chief Registrar of the Court;

"the Court" means the Sharia Court of Appeal;

"decision" includes judgment, decree and order;

"Deputy Chief Registrar" means a Deputy Chief Registrar of the Court;

"inspector" means an inspector of area courts appointed under any Area Courts Law;

"Islamic personal law" means Islamic law of the Maliki school governing the matters set out in paragraphs (a), (b), (c) and (d) of section 11;

"the High Court" means the High Court of Justice of the State;

"Kadi" includes the Grand Kadi and any Kadi of the Court;

"matter" includes any proceeding of a court not in a cause;

"State" means the Gongola State of Nigeria;

"upper area court" means an upper area court established or deemed to have been established under any Area Courts Law.

Constitution of the Sharia Court of Appeal

3.—(1) There shall be a court for the hearing of appeals from area courts in respect of cases involving questions regarding Islamic personal law.

(2) The name of such court shall be the Sharia Court of Appeal which shall be a superior court of record.

(3) The Court shall have jurisdiction to punish a person summarily for the offence commonly known as contempt of court; but a person cannot be so punished and also punished under the provisions of the Penal Code Law for the same act or omission.

4.—(1) The Court shall consist of a Grand Kadi, and not less than two other Kadis learned in the Sharia.

(2) The Court shall be deemed to be duly constituted notwithstanding any vacancy in the office of Kadi thereof.

(3) The Court shall be duly constituted for the hearing of appeals under this Law if it is constituted of two Kadis.

5. The qualifications for appointment to the office of Kadi of the Sharia Court of Appeal shall be those prescribed by the Constitution.

6.—(1) A Kadi may hold office until he attains the age of sixty five years or such later date in any particular case as the Governor acting in his discretion may think fit.

(2) A Kadi may at any time resign his office by notice in writing addressed to the Governor.

7. The Grand Kadi shall be the President of the Court and in his absence the senior Kadi present shall preside.

8. No Kadi shall be liable to be sued in any court for any act done or ordered by him in the exercise of the jurisdiction conferred by this Law, whether or not within the limits of his

jurisdiction, provided that he, at the time of such act or order, in good faith believed himself to have jurisdiction to do or to order to be done the act in question.

9.—(1) The Court shall have and use, as occasion may require, a seal bearing the inscription in the English, Hausa and Arabic languages: "The Sharia Court of Appeal".

(2) The seal of the Court shall be kept by the Registrar and a duplicate thereof shall be kept by the Deputy Registrar.

Jurisdiction and Law

10.—(1) Subject as otherwise provided in this Law the Court shall have jurisdiction to hear and determine civil appeals in which the applicable law is Islamic law from any decision of any grade of area court.

(2) For all the purposes of and incidental to the hearing and determination of any appeal, and the amendment, execution and enforcement of any judgment, order or decision made therein, the Court shall have all the powers, authority and jurisdiction of every area court of which the judgment, order or decision is the subject of an appeal to the Court, and, without prejudice to the generality of the foregoing, shall have all the powers conferred upon area courts exercising appellate jurisdiction under any Area Courts Law.

(3) Except as provided in subsection (2), the Court shall have no original jurisdiction in any cause or matter.

(4) The Court shall have jurisdiction to review cases reported to it in accordance with the Area Courts Law.

11. The Court shall be competent to decide:—

(a) any question of Islamic law regarding a marriage concluded in accordance with that law, including a question relating to the dissolution of such a marriage or a question that depends on such a marriage relating to family relationship or the guardianship of an infant;

(b) where all the parties to the proceedings are Moslems, any question of Islamic law regarding a marriage, including the dissolution of that marriage, or regarding family relationship, a foundling or the guardianship of an infant;

(c) any question of Islamic law regarding a wakf, gift, will or succession where the endower, donor, testator or deceased person is a Moslem;

(d) any question of Islamic law regarding an infant, prodigal or person of unsound mind who is a Moslem or the maintenance or guardianship of a Moslem who is physically or mentally infirm; or

(e) where all the parties to the proceedings (whether or not they are Moslems) have by writing under their hand requested the court that hears the case in the first instance to determine that case in accordance with Islamic law, any other question.

12. Subject to the provisions of section 13 of this Law and of section 223 of the Constitution, the judgment, order or decision of the Court on any matter within its jurisdiction shall be final.

13. The Court, in the exercise of the jurisdiction vested in it by this Law as regards both substantive law and practice and procedure, shall administer, observe and enforce the observance of, the principles and provisions of:—

(a) Islamic law of the Maliki school as customarily interpreted at the place where the trial at first instance took place;

(b) this Law;

(c) the Area Courts Law and any other law affecting area courts in so far as it appertains to a cause or matter within section 11 of this Law; and

(d) natural justice, equity and good conscience.

Transfer to and from High Court

14. —(1) On or at any time before the hearing of any appeal from any area court the Court, if it is of opinion that the appeal should properly have been brought before the High Court, may, at any time or at any stage of the proceedings before final judgment, and either with or without application from any of the parties thereto, and with the consent in writing of the Chief Judge, transfer such appeal to the High Court.

(2) The power of transfer under this section shall be exercised by means of an order under the hand of the President of the Court and the seal of the Court.

15. —(1) On or at any time before hearing of any appeal from an Area Court the Court, if it is of the opinion that the appeal should properly have been brought before the High Court or the Customary Court of Appeal, may, at any time or at any stage of the proceedings before final judgement, and either with or without application from any of the parties thereto, transfer such appeal to the High Court or the Customary Court of Appeal as the case may be.

(2) Notwithstanding anything contained in any rules made under section 25 to the contrary, no appeal transferred from or to the Court by the High Court in accordance with the provisions made under any law shall be questioned on the ground that it has not been entered within the time prescribed for entering appeals to the Court to which the appeal is transferred.

Sessions of the Court

16. The Court shall hold Sessions from time to time and at such places as provided by order made under section 18.

17. The Grand Kadi may by directions provide, in such manner and subject to such conditions as he may think fit, for all or any of the following matters:—

(a) the appointment of times and places at which sessions of the Court are to be held and the alterations of such time and places in such manner in any direction made under this section; and

(b) any matters which appear necessary to the Grand Kadi for carrying into effect any direction made under this section.

18. If at any time it appears to the Grand Kadi that there is no business or no substantial business to be transacted at a session then about to be held at any place, he may, notwithstanding any direction made under section 17, direct that the sessions shall not on that particular occasion be held at that place, and thereupon such sessions shall not be held.

Representation of Parties

19.—(1) No legal practitioner may appear to act for or assist any party before the Court.

(2) In any proceedings before it the Court may permit the appearance on behalf of any party to such proceedings of:—

(a) the husband, wife, guardian, servant, master or any inmate of the household of any party,

who shall give satisfactory proof that he or she has authority in that behalf; or

(b) a relative of any person who is interested in the administration of the estate of a person who was subject to the jurisdiction of a local or customary court.

(3) Subject to the provisions of subsections (1) and (2) 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 duly authorised in that behalf.

(4) An inspector shall have the right to be heard in the Court.

Officers of the Court

20. There shall be a Chief Registrar, Deputy Chief Registrar and such other officers as may be deemed necessary who shall perform such duties in execution of the powers and authorities of the Court, as may from time to time be assigned by rules of court or, subject thereto, by any special order of the Grand Kadi.

21. If any officer of the Court, employed to execute an order, wilfully or by neglect or omission loses the opportunity of executing it, then on complaint of the person aggrieved, and proof of the officers, fact alleged, the Court may, if it thinks fit, order the officer to pay the damages sustained by the person complaining, or part thereof, and the order shall be enforced as an order directing payment of money.

22. No officer of the Court or other person bound to execute any warrant or order issued by the Court shall be liable in any action for damages in respect of the execution of such warrant or order unless it be proved that he executed the same in an unlawful manner.

23. —(1) No officer of the Court shall or may directly or indirectly or by the intervention of an agent or otherwise purchase any property sold in execution, and in the event of any such person purchasing or being interested in the purchase of any property sold in execution such purchase shall be entirely void.

(2) Notwithstanding the provisions of subsection (1), nothing herein contained shall prevent any such person from purchasing by leave of the court any property sold in execution which it may be necessary for him to purchase in order to protect the interests of himself, his wife or child.

Rules of Court

24. The Grand Kadi with the approval of the Governor may make rules of court providing for any or all of the following matters:–

(a) prescribing and providing for:–

(i) the fees which may be charged in the Court;

(ii) the reduction of such fees in any particular case or class of cases and the manner in which and the persons by whom such reduction may be made;

(iii) the remission in whole or in part of any fee or reduced fee and the manner in which and the persons by whom such reduction may be made;

(b) subject to the provisions of section 13, the practice and procedure of the Court;

(c) the carrying into execution of the decrees or orders of the Court;

(d) the execution of the warrants and the service of the process of the Court;

(e) regulating the payment of allowances and travelling expenses of witnesses;

(f) regulating any matters relating to the costs of proceedings in the Court;

(g) defining, so far as conveniently may be defined by general rules, the duties of the several officers of the Court;

(h) securing the due administration of estates;

(i) requiring and regulating the filing of accounts of the administration of estates;

(j) ascertaining the values of estates;

(k) regulating and prescribing the procedure on appeals from any customary court to the Court;

(l) regulating the sittings of the Court subject to the provisions of sections 16, 17 and 18;

(m) prescribing what part of the business which may be transacted and of the jurisdiction which may be exercised by Kadis of the Court may be transacted or exercised by the Chief

Registrar or other officers of the Court, and providing that any interlocutory application to be made in connection with or for the purpose of any appeal or proposed appeal to be heard by the Court shall be heard and disposed of before a single Kadi;

(n) prescribing forms to be used for the process and procedure of the Court; and

(o) generally for carrying into effect the provisions of this Law.