

SUPREME COURT OF NIGERIA
16TH JANUARY, 1998. SC 215/94
CORAM:- S. M. A. BELGORE, A. B. WALI, I. L. KUTIGI,
U. MOHAMMED, S. U. ONU, JJSC.

JUMARE MAIWADA KOFAR JATAU APPELLANT
AND
INNO MOHAMMED MAILAFIYA RESPONDENT

***COURTS** - Relief that was not claimed - Court of Appeal was in error to have granted it.*

***EVIDENCE** - Islamic law - Proof of affinity or paternity - Is not by physical resemblance.*

***EVIDENCE** - Islamic law - Competence - Parties are not competent witnesses - Their statement in court will be likened to statement of claim or defence.*

***ISLAMIC LAW** - Oath of judgment - Was wrongly administered - Since right to claim deceased persons' property was not established.*

FACTS

The plaintiff/respondent filed an action against the defendant/appellant before Zariya Area Court No. 2. Respondent sought to recover the share she claimed her father Mailafiya inherited from his father Husaini. Husaini was the father of the appellant's mother and respondent's father. When Husaini died, his estate was divided between his heirs. Respondent is claiming to be the daughter of Mailafiya, the junior brother of appellant's mother, and she wants her father's share from Husaini's estate to be given to her. The alleged respondent's father Mailafiya left Zariya for about 60 years ago and nobody knew his whereabouts. Respondent came down from Dirin Daji a town in Kebbi State in search of her father who left her and her mother when she was 9 years old. Respondent's descrip-

tion of the features of her father did not tally with that of the junior brother of appellant's mother who had disappeared for about 60 years.

The trial area court dismissed the respondent's claim seeing that none of her four witnesses was able to convince the Court that she was the daughter of Mailafiya who left Zariya 60 years ago. Respondent's appeal to the Upper Area Court Zariya was allowed and she was declared the daughter of Mailafiya. The Court ordered that respondent be given the share of her father's inheritance - a house and farmland. The appellant's appeal to the Sharia Court of Appeal Kaduna was dismissed after it caused an oath to be administered to the respondent. Appellant's appeal to the Court of Appeal Kaduna was also dismissed. Being dissatisfied the appellant has further appealed to the Supreme Court raising 2 issues.

ISSUES FOR DETERMINATION

"i. Whether the Court of Appeal was correct in its conclusion that there was sufficient evidence on the printed record upon which the Sharia Court of Appeal could have reached a decision that the respondent was the daughter of Muhammadu Mailafiya (A missing person) and that she was entitled to inherit his estate, which had become ripe for inheritance?

ii. Whether the Court of Appeal was right in granting the respondent a judicial decree that the missing Muhammadu Mailafiya was dead and whether the court could grant reliefs not sought by the respondent ab initio?"

HELD (Unanimously allowing the appeal per lead judgment of **MOHAMMED JSC**)

Relief that was not claimed

1. What the learned justice reported however, is correct on the principles of Islamic law regarding a "Mafqud" although most of it is irrelevant to the issues formulated from the grounds of appeal. The Court of Appeal was also in error to decree that Muhammadu Mailafiya was dead since no such relief was sought by Inno or her counsel. See Paul v. George (1959) NSCC, Vol. 1 165. (p. 68 B)

Islamic law - Proof of affinity

2. Again, the evidence of PW3 linked Inno and Muhammadu Mailafiya only on what he said he observed in her features which resembled the physical features of Mailafiya. This is not the way to establish affinity between two persons under Islamic Law. A child's paternity or affinity is not considered through physical resemblance but by consideration of the period within which the child is born after consummation of the marriage of his parents. The consensus of opinion in the Maliki School is that if a child is born within 6 months of consummation of the marriage the child is affiliated to the husband. (p. 69 C)

Islamic law - Parties are not competent witnesses

3. Under Islamic law, unlike English law, parties are not competent witnesses in their respective claims, hence their statements in court would not be regarded as evidence, but something akin to statement of claim or defence in the High Court. See Abdullahi Mogaji Mafoluku v. Usman Akanbi Ita Alamu (1985) Sh. LRN. 105. Thus the statement made by Inno at the Area Court when asked to explain her case is not evidence. It must be supported by the testimony of two male unimpeachable witnesses or one male and an oath, or one male and two female witnesses or two female witnesses and an oath. (p. 70 D)

Islamic law - Oath of judgment

4. Yaminul Qada'i (Oath of Judgment) which was administered to Inno at the Sharia Court of Appeal and which (oath taking) was affirmed by the lower court, could only be relevant after the right to claim the deceased person's property is proved. Inno cannot be invited to take the oath of Yaminul Qada'i since she had not proved her claim that she is the daughter of Muhammadu Mailafiya of Kofar Jatau, Zariya. The appellant is therefore successful in the two issues raised by his counsel, J.B. Daudu, SAN. for the determination of this appeal. (p. 70 F)

REPRESENTATION

J.B. Daudu, S.A.N., with Miss U.N. Agomoh, for the appellant
S. M. T. Warwar, for the respondent

B CASES REFERRED TO

Ahmed v. Jibrin and Jan (1982) 1 Sh. L.R.N. page 68

Paul v. George (1959) NSCC Vol. 1 165

Mafuluku v. Alamu (1985) Sh. LRN 105

C Emine v. The State (1992) 7 NWLR (Part 204) 480

Messr Misr Nig. Ltd. v. Ibrahim (1974) 5 SC. 55 at 64

Seismograph Ltd. v. Ogbeni (1976) 239

Makanjuola v. Balogun (1989) 3 NWLR 190 at 206

Awijo v. Olunade (1975) 1 NMLR 82

D Nigeria Housing Development Society Ltd. v. Razag (1977) 2 SC. 57

Ochonma v. Unosi (1965) NMLR 321

LEAD JUDGMENT BY MOHAMMED JSC

E Inno Muhammadu Mailafiya, the respondent in this appeal, left
Dirin Daji, a town which was formerly in Sokoto State (now in Kebbi
State) and came to Zariya. Inno had come out in search of her father,
Muhammadu Mailafiya, who left her when she was 9 years old and her
F mother many years ago and had not returned. On her arrival at Zariya,
Inno was taken to the house of the appellant, at Kofar Jatau Quarters. It
was alleged that the house belonged to the family of one Muhammadu
Mailafiya. Because of the number of courts which this case went through
I will refer to the respondent as Inno for ease of reference.

G Inno was taken to a woman whose junior brother was called
Muhammadu Mailafiya. The woman told Inno that her junior brother left
home 60 years ago and nobody had reported to have seen or heard of
him. The woman was the mother of the appellant. Inno told the woman
H that Muhammadu Mailafiya was her father and that she came to Zariya in
order to trace his whereabouts. She was not sure whether he was alive
or dead. Inno was then asked to describe Mailafiya's distinctive and
characteristic features. Inno's description failed to tally with the features

of the junior brother of appellant's mother who had disappeared and had not been heard of for about 60 years. Inno left for Kaduna.

Eight months later, Inno sued the appellant before Zariya Area Court No. 2 and claimed for the share which she said her father Mailafiya inherited from his father Husaini. Husaini was the father of both the appellant's mother and Muhammadu Mailafiya. When Husaini died his estate was divided between his heirs. Now, since Inno is claiming to be a daughter to Mailafiya, the junior brother of appellant's mother, she wants her father's share from Husaini's estate to be given to her. The Area Court judge directed Inno to produce witnesses in proof of her assertion that she was a daughter to Muhammadu Mailafiya.

Inno called four witnesses but none was able to convince the Area Court Judge that Inno was a daughter to Muhammadu Mailafiya who left Zariya 60 years ago.

Dissatisfied with the judgment of the Area Court, Inno appealed to the Upper Area Court, Zariya. In a slipshod judgment, with no evidence to support it, the Upper Area Court judge allowed the appeal and declared that Inno was the daughter of Muhammadu Mailafiya. He also found, but again with no evidence to support it, that Muhammadu Mailafiya was Husaini's son and Husaini was Abdullahi's son. The Upper Area Court judge thereafter ordered that Inno be given her father's share of inheritance namely, a house and farm land situated at Anguwar Fatika, Kofar Jatau, Zariya City.

The appellant, Jumare Maiwada Kofar Jatau, appealed against the decision of the Upper Area Court to the Sharia Court of Appeal, Kaduna. The Sharia Court of Appeal found that the Upper Area Court had erred in introducing into the case issue of inheritance of a house and a farm and the family tree of Muhammadu Mailafiya when those matters were never raised by Inno at the trial court. The court agreed with counsel for the appellant that three of the four witnesses who testified for Inno had not given satisfactory evidence on the contention of Inno that her father was Muhammadu Mailafia who disappeared after leaving Zariya 60 years ago. The Sharia Court of Appeal however, agreed with the Upper Area Court that P.W.4 who came from Gumi had established that Muhammadu

Mailafiya died at Wasagu (now in Kebbi State). Therefore, the court referred to Mukhtasar Khalil, volume 2, page 299, and directed Inno to complement the evidence of her only one witness with an oath. After the oath had been administered to her the Sharia Court of Appeal dismissed the appeal.

Next, the appellant appealed to the Sharia Division of the Court of Appeal on 4 grounds of appeal. Learned counsel for the appellant, J.B. Daudu, S.A.N., raised two issues from those grounds, for the determination of the appeal. The two issues are as follows:-

"1. Whether there was sufficient evidence on the printed record of proceedings upon which the Sharia Court of Appeal could have reached a decision that the respondent was the daughter of the missing person, Muhammadu Mailafiya?"

2. What is the standard of proof where the estate of a missing person (Mafqud) is the subject matter of a claim by a person hitherto unknown to the missing persons family?"

The issues formulated by the learned counsel for the respondent were similar to the issues reproduced above. The Court Appeal, however, instead of considering the appeal on the points raised in the issues, embarked on elucidation of several principles of Islamic Law. Many points not relevant to issues before the court were considered. At the end Okunola, JCA who wrote the lead judgment, with which Coomassie and Tanko Muhammad, JJCA, concurred, dismissed the appeal and made the following orders:

*"1. That Inno is Muhammadu Mailafiya's daughter
2. That Muhammadu Mailafiya is Husaini's son, and
3. That Husaini is Abdullahi's son
4. That the respondent, Inno be given her father's share of inheritance, namely; a house and farmland situated and lying at Unguwan Fatika, Kofar Jatau, Zaria City."*

Dissatisfied with the decision of the Court of Appeal the appellant finally came to this Court on four grounds of appeal. The two issues formulated from the grounds of appeal by the learned counsel for the appellant were adopted by the learned counsel for the respondent in the

respondent's brief. The issues are:

"i. Whether the Court of Appeal was correct in its conclusion that there was sufficient evidence on the printed record upon which the Sharia Court of Appeal could have reached a decision that the respondent was the daughter of Muhammadu Mailafiya (A missing person) and that she was entitled to inherit his estate, which had become ripe for inheritance?

ii. Whether the Court of Appeal was right in granting the respondent a judicial decree that the missing Muhammadu Mailafiya was dead and whether the court could grant reliefs not sought by the respondent *ab initio*?"

The case of Inno before the trial court is that she is the daughter of one Muhammadu Mailafiya who left Kofar Jatau Quarters, Zariya, about 60 years ago. That the said Muhammadu Mailafiya had inherited an estate from his late father, Husaini. That a declaration is sought from the court that Inno is entitled to inherit the estate. What Inno has to prove therefore, is that she is the daughter of Muhammadu Mailafiya who left Zariya 60 years ago and secondly, she must establish that Muhammadu Mailafia is dead or could be presumed dead. In FATHUL ALIYIL MALIK Vol. 2 at page 190 the learned author said as follows:

"whoever claims ownership in fee simple of a property in the possession of another and alleged that it is part of the estate he has inherited, the person in possession of the estate shall not be asked to explain how he came about it until the claimant has established the death of his deceased predecessor from whom he claims to have inherited the estate and proves also how he becomes an heir of the said deceased predecessor in respect of the said estate." See Muhammed Ahmed v. Dalhatu Jibrin and Yan (1982) 1 Sh. L.R.N. page 68.

Thus Inno's tasks are twofold. She must prove that she is the daughter of Muhammadu Mailafiya who disappeared after leaving Zariya about 60 years ago. Secondly, she must establish that the said Mailafiya is dead or has been missing and his whereabouts are unknown for a period within which a person of his age would be presumed dead. Under Islamic Law Muhammadu Mailafiya is referred to as "MAFQUD" - a

missing person. A "Mafqud" has been described in *AI Figh AL-Islami Wa Adillatuh* by Dr. Wahbak AL-Zuhayly, Vol. 5 at page 784 as a person who has been absent from his place of abode for a long period of time that information on his whereabouts or whether he is dead or alive is unknown.

B The learned justice of the Court of Appeal, Okunola JCA, devoted 6 pages in his judgment on the issue of "Mafqud". He said so much on the issue that one would think that one is reading a thesis on the subject instead of a judgment. **What the learned justice reported however, is correct on the principles of Islamic law regarding a**
 C **"Mafqud" although most of it is irrelevant to the issues formulated from the grounds of appeal. The Court of Appeal was also in error to decree that Muhammadu Mailafiya was dead since no such relief was sought by Inno or her counsel. See Paul v. George (1959)**
 D **NSCC, Vol. 1 165.**

In trying to prove that Inno is Muhammadu Mailafiya's daughter she called four witnesses. The Sharia Court of Appeal Kaduna found only the testimony of PW4, Muhammadu Dangunta from Gumi, relevant
 E to the claim of Inno that she is the daughter of Muhammadu Mailafiya. On appeal to the Court of Appeal, the learned justice of the Court of Appeal, Okunola JCA, found that the evidence of PW3 had also supported the claim of Inno that she was the daughter of Mailafiya. It is
 F pertinent for me therefore to analyse the evidence of PW.3 and PW.4 in order to see if what they told the trial Area Court had supported the claim of Inno. PW3 said as follows:

"What I am going to say is based on the fact that I know her father Muhammadu Mailafiya because we grew up together from our
 G *childhood to adulthood up to the time we marry (sic). In fact he is my friend. He left Zaria to Kaduna during the reign of Sarkin Zauzau Ibrahim. From Kaduna we never heard any news of his whereabouts until recently this girl, the plaintiff, came claiming that she is his daughter.*
 H *When I looked at her carefully I discovered a lot of resemblance between her and Muhammadu Mailafiya, her father, I was the one who took her to Alhaji Jumare's house but in the house they all said that they do not*

trust her. This is all I know".

What can be understood, from the testimony reproduced above, is that PW3 knew Muhammadu Mailafiya and they were friends. He knew when Muhammadu Mailafiya left Kaduna and had not been heard of since. This evidence is suspect, because PW3 gave his age as 70 B years at the time he gave evidence. He told the trial court that he grew up with Mailafiya up to the time they both married. It is all agreed that Muhammadu Mailafiya left Zaria and headed for Kaduna about 60 years before the area court opened this case for hearing. If you take out 60 C years out of 70 years of PW3 he would be left with only 10 years. He could not marry at the age of 10 years. This makes the evidence of PW3 unreliable. **Again, the evidence of PW3 linked Inno and Muhammadu Mailafiya only on what he said he observed in her features which resembled the physical features of Mailafia. This is not the way to D establish affinity between two persons under Islamic Law. A child's paternity or affinity is not considered through physical resemblance but by consideration of the period within which the child is born after consummation of the marriage of his parents. The consensus E of opinion in the Maliki School is that if a child is born within 6 months of consummation of the marriage the child is affiliated to the husband. See Badaruz Zaujaini, page 229 to 231.**

The second witness whose testimony the Court of Appeal accepted is PW.4 His evidence before the Area Court reads: F

"I know that I and Muhammadu lived in the same area but I do not know where he came from even though he used to say he hailed from Zaria within Kofar Jatau quarters. When he got a wife in our area she declined to succumb at first on the ground that she did not want to marry G a stranger. We persuaded Rahama and the marriage took place. Rahama gave birth to Inno, the plaintiff, when she was 2 years old he migrated together with his wife and daughter and settled at Dirin Daji. From Dirin Daji he moved to Wasagu Village but after sometimes no news H could be traced of his presence there. It is said that his wife died before him. He died about 17 years ago but we cannot forget the birth of his daughter. What follows then was her coming back to our town seeking

for a man to testify that Muhammadu is her father."

It is quite clear that PW4 did not know Muhammadu Mailafiya who left Zariya 60 years ago and became a "Mafqud". He knew somebody called Muhammadu who married a local girl in Gumi. The local girl, Rahama, gave birth to Inno. He could not link Inno with Muhammadu Mailafiya who left Zariya for Kaduna and was not heard of since. In order to establish that Inno is the daughter of Muhammadu Mailafiya evidence must be given to show that Muhammadu Mailafiya who left Zariya and disappeared after leaving Kaduna is the same person who married Rahama, the mother of Inno, in Gumi town. PW.4 did not give such evidence. He only identified Inno having been born through a marriage between Rahama and one stranger in Gumi town called Muhammadu who told him that he was from kofar Jatau, Zariya.

Under Islamic law, unlike English law, parties are not competent witnesses in their respective claims, hence their statements in court would not be regarded as evidence, but something akin to statement of claim or defence in the High Court. See Abdullahi Mogaji Mafoluku v. Usman Akanbi Ita Alamu (1985) Sh. LRN. 105. Thus the statement made by Inno at the Area Court when asked to explain her case is not evidence. It must be supported by the testimony of two male unimpeachable witnesses or one male and an oath, or one male and two female witnesses or two female witnesses and an oath. Yaminul Qada'i (Oath of Judgment) which was administered to Inno at the Sharia Court of Appeal and which (oath taking) was affirmed by the lower court, could only be relevant after the right to claim the deceased person's property is proved. In Mayyara Vol. I commentary on Tuhfa, at page 98, the learned author defined Yaminul Qada'i thus:

"An oath proffered to a claimant over a deceased person's property in protection of such property since the deceased will not be available to dispute and rebut the claim. It is also proffered where the claim involves the property of a missing person or a minor."

Inno cannot be invited to take the oath of Yaminul Qada'i since she had not proved her claim that she is the daughter of

Muhammadu Mailafiya of Kofar Jatau, Zariya. The appellant is therefore successful in the two issues raised by his counsel, J.B. Daudu, SAN. for the determination of this appeal.

In the final result, this appeal is allowed. The judgment of the Sharia Division of the Court of Appeal Kaduna which affirmed the judgments of the Sharia Court of Appeal Kaduna and the Upper Area Court, Zariya is hereby set aside. The judgment of the Upper Area Court, Zariya and Sharia Court of Appeal, Kaduna, are also set aside. The judgment of trial Area Court No. 2 Zariya City which dismissed the claim of Inno is hereby restored. Because of the family nature of this case I shall be making no order as to costs.

BELGORE JSC

I agree with the judgment of my learned brother, Mohammed, J.S.C., that the appeal has merit. The lower Court relied on facts not before it and came to conclusions even not prayed for. I also allow this appeal as done by my learned brother, Mohammed, J.S.C.

WALI JSC

I have read in advance, a copy of the lead judgment of my learned brother Uthman Mohammed JSC, with which I entirely agree and adopt the reasons contained therein for allowing the appeal as mine.

Neither P.W. 3 nor P.W. 4 gave cogent and reliable evidence to link Inno with the missing Mailafiya as the latter's daughter. The evidence given by P.W. 4 about Mailafiya, the stranger who settled in Gumi and got married to a woman there, who was alleged to have given birth to Inno, did not prove that it was the same Mailafiya that left Zariya about 60 years ago when the present litigation, was commenced. The evidence did not help Inno's case.

As for the evidence of P.W. 3, my learned brother Uthman Mohammed JSC had analyzed it in his judgment showing that it is not credit worthy. The inference drawn from that analysis that in those days when

P.W. 3 said he and the missing Mailafiya got married about the same time as they are of the same age group could not have been true when each one of them was about 10 years old.

Inno did not make out any prima facie case to warrant judicial B oath of any kind in this case.

I also allow this appeal, set aside the judgment of Upper Area Court, Zaria, the Sharia Court of Appeal, Kaduna and that of the Court of Appeal, Kaduna Division and in place thereof restore the judgment of the trial Area Court No. 2 Zaria which dismissed Inno's case. I abide by the order of costs made in the lead judgment.

KUTIGI JSC

D I read in advance the judgment just delivered by my learned
brother, Mohammed, JSC. I agree with his reasoning and conclusions. I
will therefore allow the appeal, set aside the judgments of the Court of
Appeal, the Sharia Court of Appeal, Kaduna and that of the Upper Area
E Court, Zaria. The judgment of the trial Area Court, No. 2 Zaria City,
which dismissed plaintiff/respondent's claims is hereby restored. I also
make no order as to costs.

ONU.JSC

I have had a preview of the judgment just delivered by my learned brother Mohammed, JSC and I agree with his reasoning and conclusion that the appeal ought to succeed and it is accordingly allowed by me.

G I wish, however, to add a few words of mine as follows:-

Of the entire hierarchy of courts through which this case traversed, namely, the trial Area Court No. 2 Zaria which dismissed the plaintiff/respondent's case as lacking in merit; the Upper Area Court that H allowed the respondent's appeal by declaring her Muhammadu Mailafia's daughter, gratuitously and unsolicitedly holding that Muhammadu Mailafia is Husaini's son; that Husaini is Abdullahi's son and going as far as decreeing in her favour her father's share of the inheritance consisting of a

house and farm land situated and lying at Anguwan Fatika, Kofar Jatau, Zaria City; the Sharia Court which dismissed the appellant's appeal but made the respondent to swear and complete her evidence for her to merit her father's inheritance aforesaid which it accordingly awarded to her; and finally, the Court of Appeal sitting in Kaduna which upheld the decisions of the three courts below it while setting aside the judgment of the trial Area Court. The facts of the case have been admirably given treatment in the lead judgment of my learned brother Mohammed, JSC to need recapitulating. Suffice it to say that in arguing the appeal, the appellant submitted six issues for our determination while the respondent set out two. The respondent's two issues are, in my view, sufficient to dispose of the matter in dispute. While, therefore, I express a preference for the two issues proffered by the respondent, I deem it only necessary to set them out hereunder before considering them seriatim as follows: D

(i) Whether the Court of Appeal was correct in its conclusion that there was sufficient evidence on the printed record upon which the Sharia Court of Appeal could have reached a decision that the Respondent was the daughter of Muhammadu Mailafia (A missing person) and that she was entitled to inherit his estate, which has become ripe for inheritance. E

(ii) Whether the Court of Appeal was right in granting the Respondent a judicial decree that the missing Muhammadu Mailafia was deceased and whether the courts could grant reliefs not sought by the Respondent ab initio? F

In answering issue No. (i) above, it is pertinent to observe briefly that of all four witnesses who testified for the respondent at the trial court, the evidence of P.W.3 Muhammadu Danjuma and P.W.4 (Muhammadu Dangunta) was the most vital for the proof of her case. As the trial court rightly observed, the evidence of these two witnesses did not adequately establish that the respondent is the daughter of Muhammadu Mailafia who was a missing person (*mafqud*) and so his (Muhammadu Mailafia's) legitimate heir. This is the *moreso*, if it is remembered that it is trite that under the Sharia, the door of inheritance only opens on the fulfillment of two fundamental conditions namely, proof G H

of death of the Ipraepositus and the survival of an heir. Other authorities in Islamic Law, however, include a third condition to the effect that there must be an inheritable estate left behind by the Ipraepositus. It was established at the trial Area Court be it noted that all four witnesses who testified for the respondent were discredited. There being no proof on the preponderance of evidence that Muhammadu Mailafia was dead or that he left any property for the respondent to inherit, the court below was patently wrong when it held (per Okunola, JCA) as follows:-

"Since it has been proved that the Respondent is the daughter of the said Muhammadu Mailafia who has since been pronounced dead by this Court and since there are no impediments denying her the sole beneficiary to inherit the estate of her deceased father, I hold that the Respondent is entitled to be given her father's share of inheritance in possession of the Appellant."

As a matter of fact, the case put forward by the respondent in the trial Area Court was worthless and the attempt made thereat and in the subsequent appeal proceedings that the appellant resembled the respondent amounted, at the highest, to a mere speculation. See Idapu Emine & Ors. v. The State (1992) 7 NWLR (Part 204) 480; Messr Misr Nig. Ltd v. Ibrahim (1974) SC. 55 at 64; Seismograph Ltd v. Ogbeni (1976) 4 SC. 85 at 101 and Ihewuezi v. Ekeanya (1989) 1 NWLR (Part 96) 239.

Issue No. 2 questions inter alia the propriety of the judicial decree of death passed by the Court below on Muhammadu Mailafia as well as the appellant's poser that the three appellate courts, the Upper Area Court, the Sharia Court of Appeal and the Court below itself that the respondent did not establish with certainty that Muhammadu Mailafia (the mafqud) was dead.

In as much as there are two ways of establishing the death of a mafqud, viz:

(i) By the production of a decree of death issued by a court.

(ii) By giving evidence which will eventually lead to the issuance of the said decree of death. See Sharia: The Islamic Law by A.R. Doi, pages 45 and 46 and some aspects of Islamic Law of Sucession by

Sheikh Danladi Keffi at pages 45 and 46 respectively.

and none of these ways was established at the trial, it was erroneous to hold otherwise that it was established that Muhammadu Mailafia was dead or certified to be so by the trial court or any of the three appellate courts by direct evidence or by way of inference. Thus, when the court below held that -

"Having established that the respondent is the heir of the missing person (mafqud) we came to the second issue dealing with the standard of proof where the estate of the missing person (mafqud) is the subject-matter of a claim by a person hitherto unknown to the missing person's family. Put in another way, what type of evidence does the court require to enable it hold that the missing person is dead. Both counsel to the parties addressed us on this issue. Learned Counsel to the appellant's brief that the death of the missing person was not established and in holding otherwise the court below had engaged in an erroneous review of the evidence contrary to what is on the printed records. By way of reply, learned counsel to the respondent considered that since there is a concurrent finding of fact on evidence by the Upper Area Court and the SCA that the appellant father's junior brother is dead, this court ought not to disturb such finding unless a special or exceptional circumstance is shown by the Appellant. Learned Counsel maintained that none has been shown in this case. I have considered the submissions of both counsel to the parties on this issue. However, in dealing with this second issue relating to the mode of establishing under Islamic Law the death of a missing person (mafqud) it is necessary to examine some basic principles of Islamic Law on condition of inheritance to which this subject belong in order to fully appreciate the purpose establishing the death of a missing person as a condition for opening up an inheritance for distribution."

Further down in the judgment the learned Justices of the court below said:

"In consequence, it is my considered view that the Sharia Court of Appeal could have pronounced the missing person (mafqud) in this case dead, could substitute necessary order of issuance of judicial decree

of death on this ground. For this reason the judgment of the lower court is set aside and those of the appellate courts are modified to the effect that a decree of death in respect of the missing person is hereby pronounced and I so hold"

B The learned Justices then concluded:

"The final poser in this appeal is whether the Respondent herein is entitled to inherit the properties left behind by her father Muhammadu Mailafia? Since it has been proved that the Respondent is the daughter of the said Muhammadu Mailafia who has been pronounced dead by this court and since there are no impediments denying her the sole beneficiary to inherit the estate of her deceased father, I hold that the Respondent is entitled to be given her father's share of inheritance, in possession of the Appellant."

D They finally went on to make inter alia the following consequential orders; viz:

1. That Inno is Muhammadu Mailafia's daughter.

2. That Muhammadu Mailafia is Husaini's son, and

E *3. That the Respondent, Inno be given her father's share of inheritance, namely; a house and farm land situated and lying at Unguwan fatika, Kofar Jatau, Zaira City*

Since in the trial court the respondent's claim consisted of a mere bland assertion to the effect that -

F *"Inno Muhammadu Mailafia D/Daji said, I am suing Jumare Maiwada Kofar Jatau claiming my father's share of inheritance from him. My father's name is Muhammadu Mailafia who inherited the properties from his father, Husaini. I was born at Gumi. When the properties were divided I was at Diren Daji. And when I came to claim my father's share they said they do not know me and neither did they even know one Muhammadu Mailafia. This is why I am seeking the equitable hand of justice to help me regain my rights."*

H and which is bereft of any proof of her relationship to the said Muhammadu Mailafia who was alleged to be missing or had died without saying where, when and in what circumstances as well as stating what properties he left behind to be inherited, the case made out by the respon-

dent is amorphous and worthless, and so devoid of merit. It is for all this that I take the view that by each of the Upper Area Court, the Sharia Court of Appeal and the Court below finding in favour of the respondent, which thus reversed the trial area court, they were unjustly granting reliefs not sought by her ab initio. See Obioma v. Oloma (1978) 3 SC. 1; Makanjuola v. Balogun (1989) 3 NWLR 190 at 206, Awijo & ors. v. B. Olunade (1975) 1 NMLR 82 and Nigeria Housing Development Society Ltd. v. Abdul Razag & ors. (1977) 2 SC. 57. Indeed, it is trite that a court is only entitled to decide the issues raised on the claims before it and has no jurisdiction to decide matters not in issue before it. See Ochonma v. Unosi (1965) NWLR 321 and Western Steel Works Ltd. v. Iron & Steel Workers Union of Nigeria & Anor. (1987) 1 NMLR (Part 49) 284.

With the foregoing, my answers to both issues are accordingly rendered in the negative.