

SUPREME COURT OF NIGERIA
FRIDAY 28TH JUNE, 2002. SC. 21/1998
CORAM:- M. L. UWAIS CJN, S. M. A. BELGORE,
I. L. KUTIGI, A. O. EJIWUNMI, E. O. AYOOLA, JJSC

1. ALHAJI SAIDU ABDULSALAMI
2. SANI OMOLORI (Deceased) APPELLANTS
(OHINOYI OF EBIRA)
AND
ALHAJI ABDULRAHEEM SALAWU RESPONDENT

APPEALS - Ground of law - Objection - Propriety - The objection is misconceived - Since ground one was ground of law - As it dealt with the consequences of failure to traverse an allegation in pleadings (H1)

JURISDICTION - Fundamental nature of - Matter of jurisdiction if raised in good time - Must be determined first by court - To avert possibility of nullity of trial (H2)

JURISDICTION - Issue of - When to raise - Jurisdiction can be raised any time during trial - But where it is new issue in an appellate court - Proper application must be made to raise it as a ground of appeal (H3)

JURISDICTION - State High Court - 1999 Constitution s.251 - Where the Constitution confers jurisdiction - Power of court cannot be vitiated - Merely because the matter concerns parties who are Moslems - Provided the matter is not of Islamic personal law (H4)

FACTS

There was a standing agreement between the communities of Obehira and Okengwe on the rotational arrangement for the appointment of Chief Imam and his Naibi for the Central Mosque of the communities. Dispute thus arose between appellants and respondent as to who should be appointed as the Chief Imam of Okengwe Central Mosque. Against all odds, 1st defendant/1st appellant was appointed as the Chief Imam of the said Mosque in an election that

took place at the palace of 2nd defendant/2nd appellant. Plaintiff/respondent was not satisfied with the appointment.

Hence, he commenced this action against appellants at the High Court of Kogi State, Okene, praying for a declaration that he (respondent) was the person earlier endorsed as the Chief Imam of the Mosque, an injunction restraining 2nd appellant from turbanning 1st appellant as Chief Imam of the Mosque and an injunction restraining 1st appellant from leading the jumat prayers at Mosque and/or performing any function attached to the office of Chief Imam. At the conclusion of hearing, the learned trial judge gave judgment for respondent and granted his prayers. Appellants being dissatisfied, filed appeal at the Court of Appeal. The court dismissed the appeal and upheld the decision of trial court. Aggrieved further, appellants appealed to Supreme Court. Appellants obtained the leave of court to file an additional ground of appeal based on matter of jurisdiction of trial court to entertain the action involving Moslem parties.

HELD (Unanimously dismissing the appeal per lead judgment of **BELGORE JSC**)

APPEALS - Ground of law - Objection - Propriety

1. The respondent in his brief raised a preliminary objection which the Court intimated would be ruled upon in this judgment. The objection relates to Grounds 1 of Grounds of appeal concerning the position of pleading in the parties' dispute. According to respondent, learned justices of the lower court erred when they held that the first appellant never denied paragraph 9 of the respondent's averment that he was once removed as "Naibi" of Okengwe Central Mosque for un-islamic conduct. If it is true that a paragraph in the pleadings is un-traversed and not denied, the consequence that the allegation in the pleading in that paragraph is admitted is law not fact. Pleading contain the facts a person relies for his case and every allegation in it must be traversed - by admitting or denying it - otherwise the legal consequence is clear. The ground 1 is a clear ground of law and not of mixed law and fact. The objection is clearly misconceived and it is hereby

dismissed. (p. 1679 H)

JURISDICTION - Fundamental nature of

2. Matter of jurisdiction is so important that if raised in good time it must be addressed first by the court to avert possibility of nullity in trial. Sometimes, the court discovers possibility of lack of jurisdiction, in which case it must determine that issue first before proceeding further in the trial. (p. 1682 C)

JURISDICTION - Issue of - When to raise

3. Jurisdiction as an issue can be raised any time during the trial of a suit up to finality, but in an appellate court where it is a new issue proper application must be made to raise it as a ground of appeal. (p. 1682 E)

JURISDICTION - State High Court - 1999 Constitution s.251

4. Where however the Constitution clearly confers jurisdiction, as in the case now at hand, the power of court cannot be vitiated merely because the matter concerns parties who are Moslems or the case is of Moslem law insofar as the matter is not of Islamic personal law. (The Islamic personal law (must be of Maliki School) governing matters enumerated in S. 262 the Constitution of 1999 and S. 242 of 1979 Constitution. Therefore what is being canvassed for the appellant is not covered by Islamic personal law. Whereas, the Constitutions are clear in S. 236(1) of 1979 Constitution and section 251 of Constitution of 1999 which re-emphasize this position as to jurisdiction of the High Court. (p. 1682 F)

CASES REFERRED TO

Galadima v. Tambai (2000) 11 NWLR (Pt. 677) 1

Agbanelo v. U.B.N. Nig. Ltd. (2000) 7 NWLR (Pt. 666) 534

Adisa v. Oyinwola (2000) 10 NWLR (Pt. 674) 116

Magaji v. Matari (2000) 8 NWLR (Pt. 670) 722

Oshatoba v. Olujitan (2000) 5 NWLR (Pt. 655) 159

Amadi v. NNPC (2000) 10 NWLR (Pt. 674) 76

Okulate v. Awosanya (2000) 2 NWLR (Pt. 646) 530

Savannah Bank of Nig. Ltd. v. Pan Shipping & Transport Agencies

STATUTES REFERRED TO

Constitution of Federal Republic of Nigeria 1979, ss. 213(3), 236 and 242

^B Constitution of Federal Republic of Nigeria 1999, ss.251 and 262

RULES REFERRED TO

Supreme Court Rules 1985 O. 8 r. 9(1) and (5)

^C

LEAD JUDGMENT BY BELGORE JSC

The present respondent was the plaintiff at the High Court of Kogi State, sitting at Okene. He brought the suit against the appellant and Alhaji Sani Omolori, the Ohinoyi of Igbira, jointly. He prayed

^D for:

“1. declaration that he (plaintiff) was the person properly appointed as the chief Imam of Okengwe Central Mosque.

2. an injunction restraining the second defendant (The Ohinoyi) from turbanning the first defendant as Chief Imam of Okengwe.

^E 3. an injunction restraining the first defendant from leading the Jumat prayers at Okengwe Central Mosque and of performing any function attached to the office of Chief Imam of Okengwe Central Mosque.”

^F At the end of hearing at the trial court, Leslie, J, gave judgment for the plaintiff (now respondent) and granted all his prayers. The office of the Chief Imam of the Central mosque dates back to about forty years at Okengwe, a Community comprising two main clans of Igbiras in Okengwe and Obehira. It was the consensus of the
^G community that Obehira would produce the first Chief Imam while his deputy (Naibi) would come from Okengwe so that there would be rotation of these two mosque offices. The first Imam Alhaji Abdulsalami died in 1992, he came from Obehira; his Naibi, Alhaji Yusuf Ogwuo came from Okengwe. But Alhaji Yusuf Ogwuo pre-deceased Alhaji Abdulsalami, thus rendering vacant the office of Naibi
^H and this was filled by Alhaji Saidu Abdulsalami (First Defendant) also from Okengwe. However, due to some misconduct abominable to Islamic tenets first defendant was relieved of the post of Naibi. The plaintiff was then appointed Naibi to replace the first defendant.

The Chief Imam, Alhaji Abdulsalami died on 7th June 1992 and it was the turn of Okengwe to produce a new Chief Imam. The plaintiff at that time was the substantive or incumbent Naibi and at Okengwe community, which was to produce the next Chief Imam, was appointed after due consultation. But by a turn of events the first defendant, Alhaji Saidu Abdulsalami started parading himself as the new Chief Imam. When the first Chief Imam, Alhaji Abdulsalami was terminally ill, the plaintiff as the Naibi, acted for him and led Friday Congregational prayers up to when the Chief Imam died on 7th June 1992. At the meeting of the two Communities, where plaintiff was appointed substantive Chief Imam, the name of first defendant was rejected, no doubt, due to his previous un-Islamic conduct that formed the basis of his previous removal as Naibi. However, on 13th of May 1993, at the palace, the second defendant, a traditional ruler, also regarded as final authority to sanction appointment of Chief Imam in any part of his domain, conducted an election without presence of any Naibi of the various mosques in Okengwe and Obehira, where first defendant was purportedly elected. This led to the suit that has found its way to this Court on appeal.

As I said earlier, trial High Court judge found for the plaintiff on his three heads of claim. Court of Appeal upheld the decision of the trial court. The grounds of appeal advert to either error in law or misdirection, similarly the Additional Grounds of Appeal filed with leave of court. The issues canvassed by the parties in their briefs revolve around the Grounds of Appeal. It is pertinent to set out appellants' issues before the Court of Appeal, to wit:-

"1. Whether having regard to the state of pleadings and the weight of evidence proffered before the court, plaintiff has proved his case on balance of probabilities (Grounds 1, 3, 5, 6).

2. Whether the trial judge adverted his mind properly to the pleadings and the case made out on those pleadings before framing his issues Nos. (b) and (c) for determination and deciding same against defendant (2) and (4).

3. Whether plaintiff has proved any age-old agreement that where chief imam comes from or is to come from one of the two Moslem communities (Obehira and Okengwe) the choice is or should be the Responsibility of that community, (3)."

The respondent in his brief raised a preliminary objec-

tion which the Court intimated would be ruled upon in this judgment. The objection relates to Grounds 1 of Grounds of appeal concerning the position of pleading in the parties' dispute. According to respondent, learned justices of the lower court erred when they held that the first appellant never denied paragraph 9 of the respondent's averment that he was once removed as "Noibi" of Okengwe Central Mosque for un-Islamic conduct. If it is true that a paragraph in the pleadings is un-traversed and not denied, the consequence that the allegation in the pleading in that paragraph is admitted is law not fact. Pleading contain the facts a person relies for his case and every allegation in it must be traversed - by admitting or denying it - otherwise the legal consequence is clear. The ground 1 is a clear ground of law and not of mixed law and fact. The objection is clearly misconceived and it is hereby dismissed.

The plaintiff/respondent adopted issue 3 for his own argument in respondent's brief. After a thorough appraisal of the evidence before the trial court based on the pleadings, Court of Appeal found no reasons to disturb its decision and dismissed the entire appeal. Thus this further appeal to Supreme Court. The Court of Appeal found that the election conducted at the palace of the second defendant was not fair in that only Obehira people participated and that the communities had earlier endorsed the appointment of the plaintiff as the Chief Imam. It also upheld trial court's decision that there was a standing agreement between the communities of Obehira and Okengwe on the rotational arrangement for the appointment of Chief Imam and his Naibi for the Central Mosque of the communities. It must however be stated that Ohinoyi (2nd defendant) never filed any defence and brief in the journey of the case up to this court. In so far as he was made a party, it was held by Court of Appeal that he admitted all the claim. I am not so sure of this, it seems he was a passive participant, a nominal party awaiting the outcome of the case between the plaintiff and first defendant, and to abide by it. He however died during the pendency of the appeal at the Court of Appeal.

Before us one original ground of appeal was filed: and with leave, an additional ground based on matter of jurisdiction, not raised

in the court below, was granted. The original ground alluded to claim that Court of Appeal erred when it held that pleadings in the trial court never covered the evidence adduced before it. This is the ground I ruled upon on preliminary objection earlier on in this judgment. This claim was clearly adverted to by Court of Appeal and no evidence was pointed at to indicate unpleaded matter was admitted in evidence. It was clear before the court below that all that the respondent pleaded in the court of trial formed the very basis of the decision of that court and that the appellant was not correct in his assertions. The new issue raised in the additional ground of appeal is that the trial court had no jurisdiction to try the case, being one on purely Islamic Law, so that the trial before that court and consequent appeals, are null and void due to this absence of jurisdiction. B
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Dr. S. Masugu, of counsel, for the appellant, points out that the parties were Muslims, their claims related to mosque and its leadership and it follows that the matter be governed by Moslem Law. Section 242 of the Constitution of the Federal Republic of Nigeria, 1979, adverted to by the appellant, as conferring exclusive jurisdiction in Sharia Court of Appeal on matters of Islamic personal law, does not do anything more than it says. "Moslem personal law" is clear as explained in all Sharia Court of Appeal Laws of some States of the Federation and as enumerated in the Constitution of 1979 in section 242 thereof, and also in section 262 of the Constitution of 1999. The matters specified by the aforementioned Constitutions as within the jurisdiction of Sharia Court of Appeal are as follows:- D
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"(1) The Sharia Court of Appeal of a State shall, in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law." G

(2) For the purposes of subsection (1) of this section, the Sharia Court of Appeal shall be competent to decide -

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

(b) where all the parties to the proceedings are muslims, any question of Islamic personal law regarding a marriage, including the

validity or dissolution of that marriage, or regarding family relationship, a foundling or the guardianship of an infant;

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

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

C *(e) where all the parties to the proceedings, being muslims, have requested the court that hears the case in the first instance to determine that case in accordance with Islamic personal law, any other question.”*

Matter of jurisdiction is so important that if raised in good time it must be addressed first by the court to avert possibility of nullity in trial. Galadima v. Tambai [2000] 11 N.W.L.R. (pt. 677) 1. ***Sometimes, the court discovers possibility of lack of jurisdiction, in which case it must determine that issue first before proceeding further in the trial.*** Agbanelo v. U.B.N. (Nig.)

E Ltd. [2000] 7 N.W.L.R. (pt. 666) 534; Adisa v. Oyinwola [2000] 10 N.W.L.R. (pt. 674) 116; Magaji v. Matari [2000] 8 N.W.L.R. (pt. 670) 722. In instances like that court invites addresses from parties on jurisdiction. ***Jurisdiction as an issue can be raised any time during the trial of a suit up to finality, but in an appellate court where it is a new issue proper application must be made to raise it as a ground of appeal.*** Oshatoba v. Olujitan [2000] 5 N.W.L.R. (pt. 655) 159; Amadi v. NNPC [2000] 10 N.W.L.R. (pt. 674) 76.

Where however the Constitution clearly confers jurisdiction, as in the case now at hand, the power of court cannot be vitiated merely because the matter concerns parties who are Moslems or the case is of Moslem law insofar as the matter is not of Islamic personal law. (The Islamic personal law (must be of Maliki School) governing matters enumerated in S. 262

F ***the Constitution of 1999 and S. 242 of 1979 Constitution. Therefore what is being canvassed for the appellant is not covered by Islamic personal law. Whereas, the Constitutions are clear in S. 236(1) of 1979 Constitution and section 251 of Constitution of 1999 which re-emphasize this position as***

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to jurisdiction of the High Court.

The net result is that this appeal has no merit and it is hereby dismissed with N10,000.00 costs to the respondent.

UWAIS CJN

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I have had the opportunity of reading in draft the judgment read by my learned brother, Belgore, J.S.C. I agree that the appeal lacks merit.

The respondent herein was the plaintiff in a suit which he brought at Okene before the High Court of Kogi State, Leslie, J. jointly against the appellants herein, as defendants. The respondent claimed for a declaration that he was the proper person to be appointed as the Chief Imam of the Central Mosque at Okengwe. He also sought for injunction firstly, to restrain the 2nd appellant D from turbaning the first appellant as the Chief Imam of Okengwe and secondly, to restrain the 1st appellant from leading in Jumat (Friday) prayers at the Central Mosque and performing any function attached to the office of the Chief Imam.

At the trial, evidence was adduced by the appellant and the 2nd respondent only. In his judgment, the learned trial judge found for the respondent and gave judgment in his favour against the appellants, as claimed. The appellants felt aggrieved and therefore appealed to the Court of Appeal, Jos Division (Kalgo, J.C.A., as he then was, Salami and Opene, J.J.C.A.) complaining of error in law F and misdirection by the learned trial judge.

The Court of Appeal in its judgment (Salami, J.C.A.) found, as the trial court did, that the election of the 1st appellant, which was held at the palace of the 2nd appellant in the presence of members G of Obehira community, but in the absence of members of Okengwe community, was not fair, since the two communities were to participate in the appointment of the Chief Imam of the Central Mosque, based on the terms of the mutual agreement between the communities.

Both lower courts had found that the agreement in question H was to the effect that the appointment of the Chief Imam and his Naibi (deputy) was to be on a rotational basis as between the communities. Thus there had been concurrent findings of fact by the courts in favour of the respondent. The appellants were not satisfied

with the decision of the Court of Appeal. They appealed further to this court complaining that the Court of Appeal erred, when it held that the evidence adduced by the respondents, before the trial court, was not supported by his pleadings. Leave was sought later by the appellants, which was granted, to file and argue one additional ground of appeal, before us, on a point of law which was not raised in the court below. The additional ground challenges the jurisdiction of both the trial court and the Court of Appeal to determine the dispute between the parties since the controversy between them pertains to Islamic Law.

Dealing with this point first, learned counsel, for the appellants, argued that all the parties to the case were muslims, that the plaintiff's claim in the lower court related to a mosque and its leadership. Therefore, the dispute between the parties falls under the provisions of section 242 of the Constitution of the Federal Republic of Nigeria, 1979, as amended by Decree No. 26 of 1986, applicable to the case in view of the date (21st May, 1993) when the case was instituted in the High Court. He contended that the case should have been commenced in the Sharia Court of Appeal which has the jurisdiction and not the High Court.

As this question is fundamental, it is necessary to dispose of it first before considering the other question based on the original ground of appeal. Now section 242 of the Constitution of the Federal Republic of Nigeria, 1979, as amended, conferred on the Sharia Court of Appeal of a State the following jurisdiction:-

"242(1) The Sharia Court of Appeal of a State shall, in addition to such other Jurisdiction as may be conferred upon it by the Law of the State, exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic law which the court is competent to decide in accordance with the provisions of subsection (2) of this section."

It is clear that the 1979 Constitution did not confer original jurisdiction on the Sharia Court of Appeal to deal with questions of Islamic law, as specified under subsection (2) of the section, at first instance. Consequently, the submission of learned counsel for the appellants is untenable, as there is no provision to section 242 which enables the Sharia Court of Appeal to hear appellants' claim at first instance. The Sharia Court of Appeal is essentially an appellate court.

On the argument that the nature of the dispute between the parties and their status as Muslims, are matters pertaining to Islamic law under the 1979 Constitution. I am unable to agree. The phrase “Islamic law” is not defined under the 1979 Constitution although the Constitution made reference in section 242(2) thereof to certain aspects of it, namely marriage, family relationship, guardianship of infant, foundling, wakf, gift, will or succession and prodigal or person of unsound mind. None of these subjects covers the appointment of an imam or naibi or succession to such office. B

Learned counsel did not refer us to any Kogi State Law, which gave the Sharia Court of Appeal of the State the jurisdiction to deal, at first instance, with any dispute relating to the appointment of an Imam. Chief Imam or Namibia, and whether such Law has excluded the State High Court from exercising jurisdiction in the subject matter of the dispute between the parties in this case. It is necessary to point out that section 236 of the 1979 Constitution vested in the High Court of a State “unlimited jurisdiction.” Subsection (1) of the section stated thus:- C D

“236(1) Subject to the provision of this Constitution and in addition to such other jurisdiction as may be conferred upon it by law, the High Court of a State shall have unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue...” E

Therefore, the additional ground of appeal has no substance and the argument in support of the issue which was formulated in its support, has failed. F

The first issue for determination as formulated by the appellants in their brief of argument reads:- G

“1. Whether from the totality of the pleadings in this case (especially with reference to paragraphs 8, 11, 12 of the amended Statement of Defence) there was an admission by appellant of criminal wrong doing which disqualified him from assuming the mantle of Chief Imam of Okengwe (sic) Central Mosque irrespective of the outcome of an election organized for that purpose by the Honeoye (2nd defendant, the “religious head of his community according to Islam”). H

The appellant’s contention is that even though the 1st appel-

lant admitted in paragraph 8 of his Amended statement of defence that he was relieved of the post of Naibi of the mosque in question, he did not admit as a whole the averment in paragraph 9 of the respondent's statement of claim which alleged that it was as a result of committing adultery that the 1st appellant was removed from the office of the Naibi of Okengwe Central Mosque.

In reply, learned counsel for the respondent, raised a preliminary objection in the brief of argument which he filed on behalf of the respondent. He contended that the ground was incompetent since it is not a ground of law alone and no leave of either the Court of Appeal or this court was obtained before it was filed. No reply brief had been filed by the appellants to meet the objection. The ground of appeal in question reads:-

"1. The learned justices of the lower court erred in law when they held that the learned trial judge did examine the respondent's pleadings (which bind respondent) on the crucial issues before the two lower courts and in consequent proceeding to hold as follows:-

"Clearly the first appellant did not deny the averment contained in paragraph 9 of the statement of claim to the effect that he was removed as Naibi (sic) of Okengwe central mosque as a result of some impropriety. Indeed he admitted the same. It is therefore erroneous to attack the learned trial judge for holding that weighty allegation or that the denial were (sic) not evasive..... I mean the respondent did not aver in either paragraph 16 or 17 that he protested to the Honeoye. The averment in paragraph 11 of the amended statement of defence does not therefore, join issue with the respondent. Paragraph 12 is self-contradictory."

PARTICULARS OF ERRORS OF LAW

- (i) Parties are bound by their pleadings.
- (ii) The court cannot make out a case for a party outside of his (sic) pleadings. And evidence adduced outside of (sic) the pleadings goes to no issue and are to be expunged.
- (iii) Appellants had expressly denied the averments contained in paragraph 9 of the statement of claim.
- (iv) The parties had joined issues on matters contained in paragraph 11 of the amended statement of defence. Respondent was equally free to amend his statement of claim, but he did not."

I have examined the ground and I am satisfied that it is a ground

of appeal that is based on a question of mixed law and fact. By the provisions of section 213 subsection (3) of the 1979 Constitution, applicable to an appeal to this court, it was necessary for the appellants to obtain leave as canvassed in the preliminary objection. As this was not done, I have no difficulty to hold that the preliminary objection succeeds. Accordingly, the 1st ground of appeal is incompetent and it is hereby struck out. B

I think before I end this judgment I need to draw attention to Order 8 rule 9(1) and (5) of the Supreme Court Rules, 1985, which provides as follows:-

“9(1) It shall be the duty of counsel representing a party to an appeal to give immediate notice of the death of that party to the Registrar of the (Supreme) Court (as the case may require) and to all other parties affected by the appeal as soon as he becomes aware of the fact.” C

“(5) Where an appeal has been set down for hearing and the court is or becomes aware that the necessary party to the appeal is dead the appeal shall be struck off the hearing list.” D

In the present case it has come to our notice from the record of proceedings that the purported 2nd appellant had since died, even before the notice of appeal was filed on 21st August, 1996, and therefore had ceased to be a party to this case. There is no substitution order to replace him with another party under Order 8 rule 9(2) of the Rules. Therefore, the order of injunction granted against him by the trial court, not to turban the 1st appellant as Chief Imam of Okengwe, which was sustained by the Court of Appeal, on 20th May, 1996 cannot be upheld by this court, as the order by reason of the death of the 2nd appellant has become otiose. Nor can the appeal be struck out as the deceased is not the only necessary party to it, as defendant/appellant, in view of the presence of the 1st appellant in the case. Consequently, the provisions of Order 8 rule 9(5) do not apply. Accordingly, for my part, I hereby set aside the order of injunction granted by the trial court restraining the deceased. E F G

Finally, for the reasons which I have given, this appeal has failed. I too hereby dismiss it. I adopt the order as to costs as contained in the judgment of my learned brother, Belgore, J.S.C. H

KUTIGI JSC

I read before now the judgment just delivered by my learned brother, Belgore, J.S.C. I agree with him that the appeal lacks merit and ought to be dismissed. The Court of Appeal was right when it confirmed the decision of the trial High Court, Okene. The appellant
B has completely failed to show why we should interfere with the decisions. The appeal is accordingly dismissed with costs as assessed.

EJIWUNMI JSC

C I was privileged to have read in advance the draft of the judgment just delivered by my learned brother, Belgore, J.S.C., dismissing the appeal for all the reasons given in the said judgment. I also agree with the view of the learned Chief Justice of Nigeria that
D section 242(1) of the Constitution as amended by Decree 107 of 1993 did not confer first instance jurisdiction on the Sharia Court of Appeal. That alone suffices to dismiss this appeal. In addition to the reasons disclosed and considered in the said judgment of Belgore, J.S.C., it is manifest that the appeal lacks merit. I will therefore dismiss
E the appeal. I abide by the order as to costs as made in the judgment of my learned brother, Belgore, JSC.

AYOOLA JSC

F I have had the privilege of reading in advance the leading judgment just delivered by my learned brother, Belgore, J.S.C., and the concurring judgment delivered by the Hon. Chief Justice of Nigeria. I agree with them that this appeal should be dismissed.
G I refrain from commenting on the first ground of appeal to which the respondent raised an objection because, try as I could to understand the ground, I find it incomprehensible. Even if the ground were permissible the question which I think has been raised, namely: whether on the pleadings the appellant admitted criminal wrong doing, is of little moment in the case. The issue that was material was
H whether the appellant had been removed as Naibi for misconduct. On his admission that he was removed, the nature of misconduct becomes irrelevant when the question was not whether he had been properly removed but whether having ceased to be Naibi the mantle

of Chief Imam Okengwe Central Mosque could fall on him.

On the question of the jurisdiction of the High Court of Kogi State to entertain the respondent's action, the argument of counsel for the appellant, as I understand it, is that although by virtue of section 236 of the 1979 Constitution the jurisdiction of the High Court of a State was, subject to the provisions of the Constitution, unlimited, the jurisdiction of that court was limited by the provisions of section 242(1) of the Constitution, as amended by Decree 107 of 1993, which vested jurisdiction in questions of Islamic law on the Sharia Court of Appeal of a State. That subsection, as amended, provided that:

“The Sharia Court of Appeal of a State shall, in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly or by the Law of the State, exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic law which the court is competent to decide in accordance with the provisions of subsection (2) of this section.”

The Sharia Court of Appeal is a court empowered to exercise only appellate and supervisory jurisdiction. I agree with the view of the learned Chief Justice of Nigeria that section 242(1) did not confer first instance jurisdiction on the Sharia Court of Appeal. For that reason alone the argument of learned counsel for the appellant, based, as it were, on the reasoning that vesting of jurisdiction on the Sharia Court of Appeal limited the jurisdiction of the High Court of Kogi State, falls to the ground when the question is whether the High Court of a State is precluded by the 1979 Constitution from exercising first instance jurisdiction in matters involving questions of Islamic law. In this case, the High Court of Kogi State was exercising jurisdiction at first instance which was not vested in the Sharia Court of Appeal.

Besides, I am of the view that the limit to the otherwise unlimited jurisdiction vested in the High Court can only be as may be expressly provided by the Constitution. Merely vesting jurisdiction not described as exclusive in another court and which may be exercised concurrently with the High Court of a State would not, in my view, limit the jurisdiction of such High Court. That the provisions of section 236(1) of the 1979 Constitution did not permit the unlimited jurisdiction vested in the High Court of a State to be limited other than the Constitution itself may have provided, is an opinion that has been

expressed in several decisions of this court, for which, see: Adisa v. Oyinwola [2000] 6 S.C.N.J. 290, 314; Okulate v. Awosanya [2000] 2 N.W.L.R. (pt. 646) 530; Savannah Bank of Nigeria Ltd. v. Pan Shipping and Transport Agencies Ltd. (1983) 1 S.C.N.L.R. 296. Only
B another court will suffice to limit the jurisdiction of the High Court of a State. That was done, for example, by section 251 of the 1999 Constitution whereby exclusive jurisdiction in specified matters was vested in the Federal High Court.

C There is really no substance in this appeal. I too dismiss it with costs as ordered by my learned brother, Belgore, JSC.

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