

**SUPREME COURT OF NIGERIA**  
FRIDAY 29TH JANUARY, 2016. SC. 205/2014  
**CORAM:- I. T. MUHAMMAD, M. S. MUNTAKA-  
COOMASSIE, S. GALADIMA, O. ARIWOOLA,  
M. D. MUHAMMAD, JJSC**

MOHAMMED DANTANI ..... APPELLANT  
AND  
1. ALHAJI GARBA ..... RESPONDENTS  
2. ALHAJI MAGAJI

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APPEALS - Remittal order - Powers of CA - The consequential order remitting appeal to appropriate court - For same to be determined on merit - Falls within the powers of Court of Appeal (H1)

***FACTS***

This action was instituted at the Upper Sharia Court in Kamba, Kebbi State by plaintiff/appellant against defendants/respondents, claiming possession of farm lands. Respondents denied appellant's claim that the land was entrusted to them. They contend that the farm was inherited by them through inheritance under the Islamic Law. The parties called several witnesses to prove their respective claims. After a review of the evidence adduced in the matter, the Court held that testimonies of appellant's witnesses were credible, while that of respondents' were faulted. Judgment was therefore entered in favour of appellant. Dissatisfied, respondents appealed to the Sharia Court of Appeal. The Court in its judgment observed that only appellant was required to call witness to prove that the farms in dispute were entrusted to respondents' father.

This is in line with the principle of Islamic Law that appellant has a duty to prove and oath taking is for respondents. Relying on this principle, the Court asked respondent to take oath to prove their claim. Respondents having subscribed to the oath, the Court reversed the decision of the trial Upper Sharia Court and respondents were adjudged as the owners of the farms which they inherited from their father. Dissatisfied, appellant appealed to the Court of Appeal. The Court in its judgment nullified the proceedings of the Sharia Court of Appeal on the basis of lack of jurisdiction. The Court therefore

32 Dantani v. Garba (2016) 1 KLR (pt. 376) 31; (2016) 7 NWLR  
remitted the case to the Chief Judge of the State for trial by the High Court in its appellate jurisdiction. Aggrieved, appellant appealed to the Supreme Court.

### **ISSUE FOR DETERMINATION**

*“Whether, in the entire circumstances of this case, the court below was not wrong, after it had declared the proceeding in suit No. SCA/KBS/38/2010 as a nullity and consequently, had the respondents’ appeal before the Sharia Court of Appeal struck out, to thereafter make an order to remit the same appeal to the Chief Judge of Kebbi State for hearing before the High Court Kebbi State in its appellate jurisdiction”.*

**HELD** (Unanimously dismissing the appeal per  
**MUNTAKA-COOMASSIE JSC**)

*APPEALS - Remittal order - Powers of CA*

**1. Without much ado, I have read the two briefs of argument and the issue of propriety of a court declaring a decision a nullity and therefore striking it out and whether it was right to go ahead and remit the same struck out appeal to another court for hearing.**

***Before I finish my judgment I wish to state that the consequential order remitting the appeal to the appropriate court for same to be determined on its merit falls within the powers of the lower court.***

***I have closely considered Section 15 of the Court of Appeal Act and Order 3 Rule 23 of the Court of Appeal Rules. I discover the court below is still in possession of powers to do what it did. That being the case and without unnecessarily wasting the courts’ time, I will hold that the appeal is devoid of any merit same is hereby dismissed, it is part of this court’s powers and sense of justice to always do substantive justice.***  
(p. 36 F)

### **REPRESENTATION**

Wole Agunbiade, Esq. with him; Boluwaji Kunlere, Esq. for the appellant  
Abdullahi Yahaya, Esq. for the respondents

**STATUTES & RULES REFERRED TO**

Constitution of the Federal Republic of Nigeria 1999 (as amended),  
s. 277(1)(2)(e)

Land Use Act, s. 41

Court of Appeal Act, s. 15

Court of Appeal Rules, O. 3 r. 23

**LEAD JUDGMENT BY MUNTAKA-COOMASSIE JSC**

At the Upper Sharia Court in Kamba, Kebbi State, the appellant, Mohammed Dantani, commenced an action against the defendants, now respondents to claim possession of a farm, the subject matter of this litigation, which is in possession of the defendants now respondents. The respondents as defendants denied the claim of the plaintiff/appellant that the subject matter was entrusted to them. It was their contention that the farm was inherited by them through inheritance under Islamic Law.

In order to establish his case the plaintiff/appellant called four witnesses while the respondents called three witnesses in defence of the appellant's claim. The trial Upper Sharia Court closely reviewed the case and the evidence before it and stated that the appellant's witnesses' evidence were credible and that of defendants/respondents were impeached.

Consequently, the trial Upper Sharia Court entered judgment in favour of the plaintiff/appellant. I refer to pages 1 - 13 of the record of proceedings.

The respondents, herein, were aggrieved by the decision of the trial and successfully filed an appeal to the Sharia Court of Appeal. The Sharia Court of Appeal in its decision observed that only the appellant was required to call witness to prove that the farms in dispute were entrusted to the respondents' father. The principle of Islamic law is this 'ALBAYYINATUALA MANIDDA'A, WAL-YAMINU ALAMAN ANKARA'. The plaintiff has a duty to prove and oath taking is for the defence.

The respondents as defendants were not required to call witness to contest the appellant's claim.

The Sharia Court of Appeal asked the defendants/respondents to take oath on the Holy Quran to the effect that the farms in dispute

belong to them through their father from when they inherited same. And that they were not aware that the farms, the subject matter were entrusted to their father. As a result, swore on the Holy Quran and, consequently, the decision of the trial Upper Sharia Court was reversed and the respondents were adjudged as the owners of the farms which they inherited from their father - by MEERAIH.

The plaintiff/ appellant, Mohammed Dantani, was not satisfied with the decisions of the Sharia Court of Appeal and he appealed to the court below.

#### GROUND 1

That the whole decision is unreasonable, unwarranted for the judgment was deliver (sic) on the 7th July 2011 after the appellant has withdrawn the case. The court has accepted his withdrawal in its ruling on 19/5/2011.

In his brief of argument the appellant's counsel contended that a careful examination of the Appellant's claim would show that the Sharia Court of Appeal had no jurisdiction to entertain the respondents' appeal. The appellant relied on Section 277 (1) and (2) (e) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Section 41 of the Land Use Act to support their contention.

After the review of the submissions of both counsel in their respective briefs of argument the lower court held on pp. 53 -55 of the records thus:-

*"Clearly therefore, the claim before the trial Upper Sharia Court, was declaration of title to the farm and a claim for repossession of same. The judgment of the trial court confirmed or declared the farm to belong to the appellant for such land dispute for title and repossession to come within the jurisdiction of the Sharia Court of Appeal, it must be shown that it involves question of Islamic personal law, regarding WAKF, GIFT, WILL or succession where the endower, donor, tester or deceased person is a Muslim, as correctly submitted by counsel to the appellant on the authority of MAGAJI VS. MATARI (supra) there is nothing in the record, to show that the claim relates to any of the above enumerated issues on Islamic personal law. ... The result is that this appeal has merit and it succeeds. It is allowed. The proceedings of the Sharia Court of Appeal in SCA/KBS/38/2010 are a nullity, on the grounds of lack of jurisdiction to entertain it and the*

*appeal before it is therefore (sic) hereby struck out. The appeal is remitted back to the Chief Judge of Kebbi State, for hearing before the High Court in its appellate jurisdiction”.*

Being aggrieved by the above decision of the lower court the appellant filed an appeal to the Supreme Court and filed a Notice of Appeal containing three grounds of appeal. It is hereunder reproduced without their respective particulars:-

1. *The learned justice of the Court of Appeal erred in law by making an order remitting suit no SCA/KMB/38/2010 to the Chief Judge of Kebbi State for hearing before the High Court in its appellate jurisdiction when by their judgment, the same case had been struck out and this occasioned a miscarriage of justice.*

2. *The learned justices of the Court of Appeal erred in law and acted without jurisdiction by making an order remitting the Respondent’s appeal that is suit No. SCA/KBS/38/2010, to the Chief Judge of Kebbi State for hearing before the High Court in its appellate jurisdiction when none of the parties sought such a relief and without affording the appellant any opportunity of being heard before the order was made and this occasioned a miscarriage of justice.*

3. *The learned Justices of the Court of Appeal erred in law by remitting the respondents’ appeal before the Kebbi State Sharia Court of Appeal Argungu Division, that is, suit No. SCA/KBS/38/2010, to the Chief Judge of Kebbi State for hearing before the High Court in its appellate jurisdiction when the court below had no jurisdiction or power to do so and this occasioned miscarriage of justice”.*

In the appellants brief filed on 28/4/11 one single issue was formulated thus:-

*“Whether, in the entire circumstances of this case, the court below was not wrong, after it had declared the proceeding in suit No. SCA/KBS/38/2010 as a nullity and consequently, had the respondents’ appeal before the Sharia Court of Appeal struck out, to thereafter make an order to remit the same appeal to the Chief Judge of Kebbi State for hearing before the High Court Kebbi State in its appellate jurisdiction”. (ground 1 and 4)*

In the respondents brief filed on 19/9/14 the respondents stated that based on the amended notice of appeal one issue is to be distilled as follows:-

*“Whether in the entire circumstances of this case, the court below was right when it made an order remitting the appeal to the Chief Judge of Kebbi State for hearing before the High Court in its appellate jurisdiction having already declared the proceedings In appeal No. SCA/KBS/KMB/38/2010 a nullity on grounds of wants of jurisdiction and consequently struck out the appeal. (Gd 1 and 4)*

It appears to me the lone issue is the same. The respondent clearly adopted the lone issue formulated by the appellant without saying so in so many words, and submissions of both counsel in one breath.

In this appeal clearly the lower court in its judgment found that it has no jurisdiction to entertain such a matter and also agreed that the Sharia Court of Appeal lacked the power and jurisdiction to hear and determined the claim and or appeal before it. The lower court then made a wise decision by declaring that it has no jurisdiction to entertain the matter. I agree that the lower court should have stopped there and allowed the appeal however the lower court went ahead and struck out the matter. This order virtually killed the appeal. The appeal before it is presumed to be dead.

The other party will consider the order striking out their appeal as the proper decision of the court below. It shall then appeal over striking out order or to bring an application to restate or relist the appeal under certain circumstances.

The justices of the court below made another consequential order for remittal of the appeal to the High Court for hearing.

***Without much ado, I have read the two briefs of argument and the issue of propriety of a court declaring a decision a nullity and therefore striking it out and whether it was right to go ahead and remit the same struck out appeal to another court for hearing.***

***Before I finish my judgment I wish to state that the consequential order remitting the appeal to the appropriate court for same to be determined on its merit falls within the powers of the lower court.***

***I have closely considered Section 15 of the Court of Appeal Act and Order 3 Rule 23 of the Court of Appeal Rules. I discover the court below is still in possession of powers to do what it did. That being the case and without unnecessarily***

***wasting the courts' time, I will hold that the appeal is devoid of any merit same is hereby dismissed, it is part of this court's powers and sense of justice to always do substantive justice.***

I make no orders as to costs.

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**I. T. MUHAMMAD JSC**

I read the Judgment of my learned brother Coomassie, JSC, just delivered, I find no merit in the appeal and it is hereby dismissed. I abide by orders made in the lead Judgment.

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**GALADIMA JSC**

I have had the privilege of reading the leading judgment of my learned brother M. S. MUNTAKA-COOMASSIE, JSC. I agree D with his reasoning leading to his consequential order remitting the appeal to the Chief Judge of Kebbi State for hearing before the High Court in its appellate jurisdiction. I too make no order as to costs.

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**ARIWOOLA JSC**

My learned brother Muntaka Coomassie, JSC obliged me with the draft of his lead judgment just delivered with which I am in agreement in its entirety.

I also hold that the appeal is unmeritorious and should be dismissed. Accordingly, it is dismissed by me. I abide by the consequential orders of my learned brother in the lead judgment and I also make no order on costs.

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**M. D. MUHAMMAD JSC**

I read in draft the lead judgment of my learned brother Muntaka-Coomassie JSC, and entirely agree with his reasoning and conclusion that the appeal lacks merit and stands dismissed. I abide H by the consequential orders made in the lead judgment including the order on costs.

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