

SUPREME COURT OF NIGERIA
FRIDAY 29TH JANUARY, 2016. SC. 202/2014
**CORAM:- I. T. MUHAMMAD, M. S. MUNTAKA-
COOMASSIE, S. GALADIMA, O. ARIWOOLA,
M. D. MUHAMMAD, JJSC**

1. ZAKI MAMMAN
2. ANGO DAN ABA APPELLANTS
AND
MALL. DAN HAJO RESPONDENT

APPEALS - Remittal order - Powers of CA - The order remitting the matter to appropriate court for trial on the merits - Falls squarely within CA power as statutorily conferred (H1)

FACTS

Plaintiff/respondent commenced this action against defendants/appellants at the Upper Sharia Court I Birnin Kebbi claiming possession of the farm lands he inherited from his father. The farm lands in dispute are situate at Karaye district of Kebbi State. At the conclusion of trial, the trial court rejected the testimonies of the witnesses called by respondent to prove his case. The Court rather preferred the testimonies of the witnesses of appellants.

Judgment was therefore entered for appellants. Not satisfied with the decision of the Court, respondent appealed to the Sharia Court of Appeal. The Court dismissed the appeal and affirmed the trial Court's judgment. Respondent went further on appeal to the Court of Appeal Sokoto Division. The Court struck out the appeal on the ground of want of jurisdiction. The Court went ahead to remit the appeal to the Kebbi State High for hearing in its appellate jurisdiction. Dissatisfied, respondent 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 struck out the appeal before the Sharia Court of Appeal of Kebbi State for want of jurisdiction, by thereafter making an order to remit the appeal to the Kebbi State High Court of Justice to hear and determine it in its appellate jurisdiction.

HELD (Unanimously dismissing the appeal per **M. D.**

MUHAMMAD JSC)

APPEALS - Remittal order - Powers of CA

1. Before us, the narrow issue in controversy between the parties pertains to the lower court's order remitting the case to the Kebbi State High Court that has the necessary jurisdiction to determine the appeal from the Sharia Court in the first place. Certainly, the appellants would have been better informed on the utility of the instant appeal if their counsel had further adverted his mind to Section 244 of the very 1999 Constitution which, beyond creating their right of appeal, also provides for the procedure to govern how the Court of Appeal proceeds on such appeals.

In the case at hand, the consequential order remitting the matter to the appropriate court for same to be determined on the merits falls squarely within the lower court's powers as statutorily conferred. One is unable to agree with learned counsel to the appellants that because the Sharia Court of Appeal which entertained the appeal earlier without the necessary jurisdiction could only make the order of transfer before striking out an appeal, the lower court is equally without power to make the transfer after it had struck out the appeal.

Learned counsel certainly underestimates the extent of the powers of the lower court by virtue of Section 15 of the Court of Appeal Act and Order 3 rule 23 of the Court of Appeal Rules. The various pronouncements of this very Court on the two provisions are still extant. (pp. 158 G/160 A)

REPRESENTATION

Wole Agunbiade with Boluwaji Kunlere for the Appellants
Abdullahi Yahaya for the Respondent

CASES REFERRED TO

Iyaho v. Effiong (2007) 11 NWLR (pt. 1044) 31

Waziri v. Ali (2009) 4 NWLR (pt. 1130) 178

The Dagaci of Dere v. The Dagaci of Ebira (2006) 7 NWLR (pt. 979) 382

ANPP v. Goni (2012) 7 NWLR (pt. 1298) 147

Olutola v. University of Ilorin (2004) 18 NWLR (pt. 905) 416

Lado v. Congress for Progressive Change (2011) 18 NWLR (pt. 1279) 689

Korau v. Korau (1998) 4 NWLR (pt. 545) 212

Abuja v. Bizi (1989) 5 NWLR (pt. 119) 120

Lagga v. Sarhuna (2008) 16 NWLR (pt. 1114) 427

STATUTES & RULES REFERRED TO

Court of Appeal Act Cap C36 (as amended) LFN 2004, s. 15

Sharia Court of Appeal Cap 133 Laws of Kebbi State 1996, s. 14

Constitution of the Federal Republic of Nigeria 1999, s. 244

Court of Appeal Rules, O. 3 r. 23

LEAD JUDGMENT BY M. D. MUHAMMAD JSC

This is an appeal against the judgment of the Court of Appeal, Sokoto Division, hereinafter referred to as the lower court, delivered on 28th June 2012. The brief facts of the case that brought about the appeal are supplied immediately below. As plaintiff, the respondent herein commenced action against the appellants at the upper Sharia Court I Birnin Kebbi claiming possession of the farm lands he inherited from his father. The farm lands in dispute are situate at Karaye district of Kebbi State. At the conclusion of trial, the trial court rejected the testimonies of the witnesses called by the respondent to prove his case for same were successfully impeached. Instead, the court preferred the testimonies of the witnesses of the appellant and entered judgment for him.

Dissatisfied, the respondent appealed to the Sharia Court of Appeal which, on dismissing the appeal, affirmed the trial court's judgment. Respondent's further appeal on three grounds vide his Notice of appeal filed on 15th September 2011 to the Court of Appeal, succeeded. In allowing the appeal, the lower court at pages 64 - 67 of the record of Appeal concluded as follows:-

“On the whole, the instant appeal succeeds only on the ground of want of jurisdiction. The proper court that has jurisdiction to

adjudicate in the matter by hearing and determining same, in my humble view, is the Kebbi State High Court of Justice. Being an appeal heard and determined by the lower court without jurisdiction to hear same, the appeal is hereby struck out for want of jurisdiction. As a Corollary, it is hereby remitted to the Kebbi State High Court of Justice to hear and determine it in its appellate jurisdiction same hearing emanated from the Upper Sharia Court No.1 Birnin Kebbi.”

Aggrieved by the foregoing decision, the respondents in that court have appealed to this Court on an amended Notice of appeal filed on the 28th April 2014 containing four grounds. At the hearing of the appeal the parties, having identified their briefs including the appellant’s reply brief, adopted and relied on same as their arguments for and against the appeal. The lone issue distilled by the appellants from their 1st and 4th grounds of appeal reads:-

“Whether, in the entire circumstances of this case, the court below was not wrong, after it had struck out the appeal before the Sharia Court of Appeal of Kebbi State for want of jurisdiction, by thereafter making an order to remit the appeal to the Kebbi State High Court of Justice to hear and determine it in its appellate jurisdiction. (Grounds 1 and 4)”

Appellants’ 2nd and 3rd grounds of appeal are deemed abandoned and accordingly struck out.

The not dissimilar issue formulated by the respondent as arising for the determination of the appeal reads:-

“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 before the Sharia Court of Appeal a nullity on grounds of want of jurisdiction and consequently struck out the appeal. (Grounds 1 and 4).”

The appeal will be determined on the basis of the issue of the respondent which explicitly captures the controversy the appeal raises.

On the lone issue, learned appellants’ counsel argues that the lower court having struck out the appeal before it as same had arisen from the Kebbi State Sharia Court of Appeal that exercised jurisdiction it never had, there was nothing left before the lower court to remit to the Kebbi State High Court for further enquiry. The court’s order consequent upon striking out the appeal before the Sharia Court of

Appeal for want of jurisdiction, it is submitted, is of no moment. The order the lower court purportedly made apparently pursuant to its powers under Section 15 of the Court of Appeal Act CAP C36, (as amended) Laws of the Federation 2004, learned counsel contends, could only have been properly made in relation to the powers vested in the Sharia Court of Appeal in CAP 133 Laws of Kebbi State 1996. B By virtue of Section 14 of the said legislation, the Sharia Court of Appeal from which the appeal determined by the lower court emanated, can only remit the matter to the appropriate court for determination before striking out the appeal before it. The power to C remit the case by the court, it is further contended, lapses on striking out the appeal. The lower court, it follows, had wrongly exercised a power it does not have. The order it made remitting the matter to the Kebbi State High Court, learned counsel urges, on resolving the lone issue against the respondent and allowing the appeal, should D be set aside. Learned counsel relies on: *Iyaho V. Effiong & ors* (2007) 11 NWLR (Pt 1044) 31 at 37, *Waziri & anor V. Ali & ors* (2009) 4 NWLR (Pt 1130) 178 at 221, *The Dagaci of Dere & ors V. The Oagaci of Ebira & ors* (2006) 7 NWLR (Pt 979) 382 at 434 and *ANPP V. Goni & ors* (2012) 7 NWLR (Pt 1298) 147 at 182. E

Responding on the lone issue, learned counsel for the respondent contends that the appellants only grouse is on the lower court's order remitting the appeal it had struck out same having been heard by the Kebbi State Sharia Court without the necessary F jurisdiction. The appellants, it is contended, are bound by all the crucial findings of the lower court they have not appealed against. The respondent as the appellant at the court below, it is submitted, urged the court to remit the appeal to the appellate division of the Kebbi State High Court after allowing his appeal and setting aside G the judgment of the Sharia Court of Appeal which, in spite of its lack of jurisdiction, determined the appeal before it. The lower court did exactly as urged. The lower court's order remitting the matter to the State High Court for it to be determined on its merits, after striking H out the appeal before it, learned counsel submits, cannot be faulted. It tallies with current practice and has support in many judicial authorities. Learned counsel relies inter-alia to Professor Aderemi Dada Olutola V. University of Ilorin (2004) 18 NWLR (Pt 905) 416 at 459 and Senator Yakubu Garba Lado & ors V. Congress for

Progressive Change (CPC) & ors (2011) 18 NWLR (Pt 1279) 689 at 730.

Lastly, learned counsel contends that Section 15 of the Court of Appeal Act (as amended) 2004 empowers the lower court to make the order it made and having acted within the jurisdiction thereunder conferred on it, the court's decision endures. Counsel further relies on *Safiya Korau V. Bazai Korau* (1998) 4 NWLR (Pt 545) 212 and *Alhaji Hassan Abuja V. Lawan Gana Bizi* (1989) 5 NWLR (Pt 119) 120. The powers of the lower court, further argues counsel, goes beyond the powers the Sharia Court of Appeal may exercise pursuant to Section 14 of the Sharia Court of Appeal Law CAP 133 Laws of Kebbi State 1996. The facts and circumstances of the instant case, learned counsel concludes, make the lower court's invocation of its powers under Section 15 of the Court of Appeal Act not only desirable but necessary. Relying on *Iliya Akwai Lagga V. Audu Yusuf Sarhuna* (2008) 16 NWLR (1114) 427 at 482. Learned counsel urges the resolution of the lone issue against the appellant and in doing so dismissing the appeal.

My lords, it is not the contention of any of the parties to this appeal that the lower court lacked the jurisdiction of hearing and determining the appeal against the judgment of the Kebbi State Sharia Court of Appeal instantly further appealed against. Such a contention would have been puerile and degrading in the light of the clear and unambiguous words that make up Section 240 of the 1999 Constitution (as amended) which provides:-

"240-Subject to the provisions of this constitution, the Court of Appeal shall have jurisdiction to the exclusion of any other Court of law in Nigeria to hear and determine appeals from the... Sharia Court of Appeal of a State."

Before us, the narrow issue in controversy between the parties pertains to the lower court's order remitting the case to the Kebbi State High Court that has the necessary jurisdiction to determine the appeal from the Sharia Court in the first place. Certainly, the appellants would have been better informed on the utility of the instant appeal if their counsel had further adverted his mind to Section 244 of the very 1999 Constitution which, beyond creating their right of appeal, also

provides for the procedure to govern how the Court of Appeal proceeds on such appeals. The Section provides:-

“244.-(1) An appeal shall lie from decisions of a Sharia Court of Appeal to the Court of Appeal as of right in any civil proceedings, before the Sharia Court of Appeal with respect to any question of Islamic personal law which the Sharia Court of Appeal is competent to decide.

(2) Any right of appeal to the Court of Appeal from the decisions of a Sharia Court of Appeal conferred by this section shall be -

(a) exercisable at the instance of a party thereto or, with the leave of the Sharia Court of Appeal or of the Court of Appeal, at the instance of any other person having an interest in the matter; And

(b) exercised in accordance with an Act of the National Assembly and rules of court for the time being in force regulating the powers, practice and procedure of the Court of Appeal.

(Underlining mine for emphasis).

Pursuant to Section 244 (2) (b) supra, Section 15 of the Court of Appeal Act (as amended) 2004 and Order 3 rule 23 of the Court of Appeal Rules have been put in place by the National Assembly and the President of the Court of Appeal respectively. In Folomo Bamigbe (1998) 7 NWLR (Pt 557) 679 at 701 this Court in dwelling on the two provisions stated as follows:-

*“In the first place, there is section 16 of the Court of Appeal Act, 1976 which empowers the Court of Appeal to exercise full jurisdiction over matters before it and may, inter alia, remit a case to the court below for the purpose of rehearing or may give such other directions as to the manner in which the court below shall deal with the case, or, in case of an appeal from the court below in that court’s appellate jurisdiction, order the case to be reheard by court of competent jurisdiction. See *Iyaji v. Eyigebe* (1987) 3 NWLR (Pt. 61) 523 at 530 E-G; *Igboho, Irepo L.G.A. and another v. The Boundary Settlement Commissioner* (1988) 2 S.C.N.J. 28; (1988) 1 NWLR (pt. 69) 189 etc. There is also the provision of Order 3 rule 23 of the Court of Appeal Rules, 1981 which, inter alia, empowers the Court of Appeal to give any judgment or make such further or other order as a case may require. These powers are exercisable by the court in favour of all or any of the parties although such parties may not*

have appealed from or complained of the decision.” (Underlining mine for emphasis).

In the case at hand, the consequential order remitting the matter to the appropriate court for same to be determined on the merits falls squarely within the lower court’s powers as statutorily conferred. One is unable to agree with learned counsel to the appellants that because the Sharia Court of Appeal which entertained the appeal earlier without the necessary jurisdiction could only make the order of transfer before striking out an appeal, the lower court is equally without power to make the transfer after it had struck out the appeal.

Learned counsel certainly underestimates the extent of the powers of the lower court by virtue of Section 15 of the Court of Appeal Act and Order 3 rule 23 of the Court of Appeal Rules. The various pronouncements of this very Court on the two provisions are still extant.

It is for all these that I resolve the lone issue in the appeal against the appellants. Their unmeritorious appeal is dismissed. Parties are to bear their respective costs.

I. T. MUHAMMAD JSC

My learned brother, M. D. Muhammad, JSC; made available to me before today, a draft copy of his leading judgment, just delivered. I am in agreement with him in his reasoning and conclusion.

My lords, what the learned counsel for the appellant appears to be quarrelling with, is the “consequential” “ancillary”, and or “corollary” Order, made by the court below. Now, a look at the Notice and Grounds of Appeal filed by the appellant for consideration by the court below, reveals that the grounds of appeal were originally, ‘scrupled’ by the appellant himself though amended later, with leave of court. The major complaint in the said grounds was the lack of jurisdiction of the Kebbi State Sharia Court of Appeal to entertain the appeal. At the end of the Notice of Appeal, the appellant prayed for:

“An order setting aside the judgment of the Sharia Court of Appeal, Kebbi State in suit No. SCA/KBS/BK/92/2010 and order re-trial.”

In his brief of argument placed before the court below, learned counsel for the appellant before that court, Mr. A. A. Adedeji, in his concluding paragraph of the brief (paragraph 5.1) urged the court below, to, in his words:

“I allow this appeal, set aside the judgment of the lower court being a nullity and transfer this appeal to the Appellate Division of the High Court of Kebbi State for hearing.” (underlining for emphasis) C

I think this is what, exactly, the court below did, when it found that the Sharia Court of Appeal of Kebbi State lacked jurisdiction to entertain the appeal filed before it by the then appellant. In this court, leave was sought and obtained by the appellant to file and argue additional grounds of appeal. This additional ground of appeal forms D the kernel of the issue under consideration. It reads as follows:

“The learned Justices of the Court of Appeal erred in law and acted without jurisdiction by remitting the respondent’s appeal at the Kebbi State Sharia Court of Appeal to the Chief Judge of Kebbi State for hearing before the High Court in its appellate jurisdiction, when that appeal had already been heard and final judgment had been delivered by the Kebbi State Sharia Court of Appeal and in the absence of the consent of the Chief Judge of Kebbi State, and this occasioned miscarriage of justice.” F

PARTICULARS

I. The appeal of the respondent before the Kebbi State Sharia Court of Appeal had been heard and final judgment of that court had been delivered

II. The time to effect the transfer or remittal of an appeal before G the Kebbi State Sharia Court of Appeal to the High Court of Justice of Kebbi State had lapsed.

III. There was no consent in writing by the Chief Judge of Kebbi State in respect of the transfer or remittal of the appeal before H the Sharia Court of Appeal of Kebbi State to the High Court of Justice of Kebbi State.

IV. The power of transfer or remittal of the respondent’s appeal from the Sharia Court of Appeal of Kebbi State to the High Court of

Justice of Kebbi State was exercised by the court below outside the parameters of the law that permits such transfer or remittal.

v. The remittal of the respondent's appeal was done in violation of the law and when the jurisdiction to do so had ceased.

The additional ground as above, was made no. 4 (four) on the amended Notice of Appeal. The learned counsel for the appellant, formulated his lone issue from grounds Nos. 1 and 4. The issue for consideration reads as follows:

"Whether, in the entire circumstances of this case, the court below was not wrong, after it had held that the Sharia Court of Appeal of Kebbi State had no jurisdiction to entertain the respondent's appeal, to thereafter make an order of remittal of the appeal to the Chief Judge of Kebbi State for hearing before the High Court of Justice of Kebbi State in its appellate jurisdiction." (Grounds 1 and 4)

Thus, grounds 2 and 3 of the amended Notice and Grounds of Appeal have been abandoned by the appellant and are, accordingly, struck out.

Learned counsel for the appellant, relying heavily on the provision of section 14 of the Sharia Court of Appeal Law, Cap. 133, Laws of Kebbi State, 1996, conceded to the fact that the provision empowers one court to transfer a case to another and that the court below could exercise the power of the Sharia Court of Appeal of Kebbi State to transfer the case to the High Court of Kebbi State. He cited and relied on Section 15 of the Court of Appeal Act, (as amended), Cap C36, Laws of the Federation of Nigeria, 2004. Learned counsel submitted that the power of such transfer, however, must be exercised within the compass of section 14 of the Sharia Court of Appeal Law. The time within which the transfer of the case could have been done by the Sharia Court of Appeal to High Court had elapsed before the court below made the order of remittal. Secondly, the transfer could only have been legally done with the consent in writing of the Chief Judge of Kebbi State. Learned counsel argued that the order of remittal of the appeal made by the court below is null and void. He generally, relied on several decided cases including All Nigeria Peoples Party v. Goni & Ors (2012) 7 NWLR (Pt.1298) 147 at 182 A - G; Waziri & Anor v. Ali & Ors (2009) 4 NWLR (Pt.1130) 178; The Dagaci of Dere & Ors v. The Dagaci of Ebwa & Ors (2006) 7 NWLR (Pt.979) 382.

My lords, I think I am in agreement with the learned counsel for the respondent in his submission that the effect of the finding by the court below that the Sharia Court of Appeal of Kebbi State was devoid of jurisdiction to entertain the appeal lodged before it, is that the entire proceedings before that court are a nullity and, are, in the eyes of the law, as if they never took place and that since the court below found that the court with jurisdiction to entertain the appeal was the Kebbi State High Court of Justice in its appellate jurisdiction, which finding has not been appealed against, it only means that the appeal was yet to be heard and determined. Thus, the order remitting the appeal to the Kebbi state High Court to be heard and determined in its appellate jurisdiction was the proper thing to do.

I think I should remind your lordships that where an appeal court sits to determine an appeal, at the tail end of the proceedings, the ultimate order to be made by the appeal court is either it “allows” the appeal or it “dismisses” the appeal. Whichever of the two orders is made, there, certainly, are some consequential orders which follow the main or principal order/relief. What the appellant before the court below requested was to allow the appeal and for the setting aside of the judgment of the lower court (i.e. Sharia Court of Appeal) being a nullity and transfer the appeal to the appellate division of the High Court of Kebbi state for hearing as it is that court that is vested with jurisdiction to entertain such matters.

Now, call it “transfer”, “remittal” “referral” or whatever, what the court below did was to direct the consequence of what would naturally follow after allowing the appeal before it and setting aside the null decision of the Sharia Court of Appeal. For the sake of clarity, I think there is need to quote, in extenso what the court below said:

“My Lords, permit me to stress here, that once an issue on appeal is one on title to land, as in this instant appeal, the jurisdiction of Sharia Court of Appeal to hear and determine such appeal is ousted, since by the provisions of Section 277 of the 1999 Constitution, the Sharia Court of Appeal has jurisdiction to determine question of Islamic personal law only. See: Abuja v. Bisi (1989) 5 NWLR (Pt. 119) 1. Thus, where the subject matter of a suit at the trial or court of first instance did not relate to Islamic personal law as in this instant appeal, it is the High Court of a state and NOT the Sharia Court of Appeal of a state that has jurisdiction in the matter.

In that regard, this appeal had to be transferred or remitted to the High Court of a state for determination. See: Safiya Korau v. Bazai Korau (1998), 4 NWLR (Pt. 545) 212 at 225.

Consequently, I find myself in entire agreement with the learned counsel for the appellant's submission that the Sharia Court of Appeal (i.e. the lower court) is devoid of jurisdiction to hear and determine the appeal lodged before it, the subject matter of which is purely one of declaration of title to farmland, which does not come within the precinct of Islamic Personal Law. I accordingly so hold.

On the whole, the instant appeal succeeds only on the ground of want of jurisdiction. The proper court that has jurisdiction to adjudicate in the matter by hearing and determining same, in my humble view, is the Kebbi State High Court of Justice. Being an appeal heard and determined by the lower court without jurisdiction to hear same, the appeal is hereby struck out for want of jurisdiction. As a corollary, it is hereby remitted to the Kebbi State High Court of Justice to hear and determine it in its appellate jurisdiction same having emanated from the Upper Sharia Court No. 1 Birnin Kebbi. I make no order on costs. “

It is my humble understanding that the striking out of the appeal refers to the incompetent appeal that was lodged before the court below. The well laid down principle of the law is that one cannot put something on nothing and expect it to stand, it will certainly collapse. Macfoy v. UAC (1961) 3 WLR 405 at 1409. All the proceedings conducted by the Sharia Court of Appeal of Kebbi State in that matter, giving rise to this appeal, were voided by the provision of Section 277 of the 1999 Constitution (as amended). In Macfoy's case (supra), Lord Denning was reported to have said:

“If an act is void, then it is in law a nullity, it is not only bad but incurably bad. There is no need for an order of the court to set it aside. It (is) automatically null and void without much ado, though it is sometimes convenient to have the court to declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there.”

The consequential or “corollary” order made by the court below by remitting the appeal to be heard by the appellate division of the Kebbi State High Court, was, without doubt done in pursuance

of the wide powers, conferred on the court below by the provisions of Section 15 of the Court of Appeal Act, Cap. C36, Laws of the Federation of Nigeria, 2004 (as amended). This Section provides:

“The Court of Appeal may, from time to time, make any order necessary for determining the real question in controversy in the appeal, and may amend any defect or error in the record of appeal, and may direct the court below to inquire into and certify its findings on any question which the Court of Appeal thinks fit to determine before final judgment in the appeal, and may make an interim order or grant any injunction which the court below is authorised to make or grant and may direct any necessary inquiries or accounts to be made or taken, and, generally shall have full jurisdiction over the whole proceedings as if the proceedings had been instituted in the Court of Appeal as court of first instance and may re-hear the case in whole or in part or may remit it to the court below for the purpose of such re-hearing or may give such other directions as to the manner in which the court below shall deal with the case in accordance with the powers of that court or in the case of an appeal from the court below, in that court’s appellate jurisdiction, order the case re-heard by a court of competent jurisdiction.” (Underlining for emphasis)

In complimenting the above powers of the court below, one can easily have resort to the provision of Order 3 Rule 23 of the Court of Appeal Rules, 2002, (as amended) which states:

“23-(1) The court shall have power to give any judgment or make any order that ought to have been made, and to make such further or other order as the case may require including any order as to costs.

(2) The powers contained in paragraph (1) of this rule may be exercised by the court, notwithstanding that the appellant may have asked that part only of a decision may be reversed or varied, and may also be exercised in favour of all or any of the respondents or parties, although, such respondents or parties may not have appealed from or complained of the decision.” (underlining for emphasis)

It is my belief that the two provisions cited by me above, are done with the good intention of meeting the “Justice of the case.” My learned brother, M. D. Muhammad, JSC, quoted what this court said on the two provisions, in the case of Chief Samuel Adebisi Falomo V. Oba Omoniye Banigbe & Ors (1998) 7 NWLR (Pt 559) 679. I

think, I need, for the sake of emphasis, to re-iterate the point laid by Iguh, JSC (Rtd):

“Issue 3 complains of the order of transfer of the substantive case by the Court of Appeal to another judge of the Kwara State High Court for hearing and determination when no party applied for it.

In the first place, there is section 16 of the Court of Appeal Act, 1976 which empowers the Court of Appeal to exercise full jurisdiction over all matters before it and may, inter alia, remit a case to the court below for the purpose of rehearing or may give such other directions as to the manner in which the court below shall deal with the case, or, in case of an appeal from the court below in that court’s appellate jurisdiction, order the case to be reheard by a court of competent jurisdiction. See *Iyaji v. Eyigebe* (1987) 3 NWLR (Pt.61) 523 at 530 E-G; *Igboho, Irepo LGA & Anor v. The Boundary Settlement Commissioner* (1988) 2 SCNJ 28,’ (1988) 1 NWLR (Pt.69) 189 etc. There is also the provision of Order 3 Rule 23 of the Court of Appeal Rules, 1981 which, inter alia, empowers the Court of Appeal to give any judgment or make such further or other order as a case may require. These powers are exercisable by the court in favour of all or any of the parties although such parties may not have appealed from or complained of the decision.” (Underlining for emphasis)

Although courts of law are not to be seen as Father Christmas, doling out gifts here and there, they must equally, provide necessary guidance and succour wherever and whenever necessary. As a matter of fact, when the court below was seized of the appeal in question or any other appeal, the applicable laws, primarily, would be those which govern such appeals before the court. Except where it is extremely desirable, the court below would hold tenaciously to laws governing its operation. Seldom, does the court below, or any appellate court, resort to rules governing appeals before courts from which an appeal emanates. Thus, reference to the provision of Section 14 of the Kebbi State Sharia Court of Appeal Law, Cap. 133 Laws of Kebbi State, 1996 which encouraged intra court transfer of cases, had, as at the time the appeal was heard by the court below, no utilitarian benefit. The order made by the court below remitting the appeal to the High Court of Kebbi State was purely based on the request made by the

then appellant and in pursuance of all powers conferred on that court in that behalf. The court below, in my view, did exactly what was requested. Thus, the court below order remitting the appeal to be heard by the Kebbi State High Court, cannot be faulted in view of the provision of Section 277 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). B

For these and the further reasons contained in the lead judgment of my learned brother, M. D. Muhammad, JSC, I, too, find the appeal unmeritorious. I dismiss the appeal. I abide by consequential orders made therein. C

GALADIMA JSC

I have read the lead judgment of my learned brother, MUSA DATTIJO MUHAMMAD, JSC, just delivered. I agree with his thorough consideration of the lone issue leading to the conclusion, that the appeal be dismissed for lacking in merit. D

Having regards to the facts of this case and the argument put before this court vis-à-vis the law applicable, the consequential order made by the court below remitting the matter to the Kebbi State High Court sitting in its appellate jurisdiction to determine the appeal from Sharia court, falls squarely within the powers of that court by virtue of section 15 of the Court of Appeal Act (as amended) 2004. See SAFIYA KORAU v. BAZAI KORAU (1998) 4 NWLR (pt. 545) 212, ALHAJI HASSAN ABUJA v. LAWAN GANA BIZI (1989) 5 NWLR (pt.119) 120. E F

I abide by order made on costs in the lead Judgment. In sum, the appeal is dismissed for lacking in merit. The decision of the court below is affirmed. G

ARIWOOLA JSC

I had the privilege of reading in draft the leading judgment of my learned brother Musa Dattijo Muhammad, JSC just delivered and I entirely agree with the reasoning and conclusion of the said leading judgment. His Lordship dealt with the sole issue beautifully and I have nothing new to add. I also consider the appeal devoid of H

any merit and it deserves to be dismissed. Accordingly, it is dismissed by me.

I abide by the consequential orders in the said lead judgment inclusive of the order on costs.

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