

SUPREME COURT OF NIGERIA
FRIDAY 29TH JANUARY, 2016. SC. 203/2014
**CORAM:- I. T. MUHAMMAD, M. S. MUNTAKA-
COOMASSIE, S. GALADIMA, O. ARIWOOLA,
M. D. MUHAMMAD, JJSC**

ALIYU SALIHU APPELLANT
AND
ALHAJI ABDUL WASIU RESPONDENT

APPEALS - Reply brief - Filing - It is filed only in response to new argument of respondent - And it deals with new issue of law - Which was not covered by appellant's brief (H1)

APPEALS - Remittal order - Powers of CA - Appeal was properly remitted by CA to the HC for hearing in its appellate jurisdiction - Despite the nullification of proceedings of Sharia CA on basis of lack of jurisdiction (H2)

FACTS

Plaintiff/appellant commenced this action against defendant/respondent at the Upper Sharia Court Jega, Kebbi State claiming two farms and a house which were the properties of his paternal uncle, known as Abdulmuminu (also a maternal uncle to respondent). The action before the Court was meant to have the properties in question shared between the parties as the said Abdulmuminu is no longer traceable. In response to appellant's claim, respondent contended that indeed there were three farms that belonged to Abdulmuminu. Respondent however had no witness to establish that the third farm belonged to Abdulmuminu. Appellant who contended that the third farm belonged to his father, called two witnesses to prove his claim. However, the testimonies of one of the two witnesses called by appellant failed to meet the requirements of Islamic law on credibility.

In its judgment, the Court held that since the death of Abdulmuminu has not been confirmed, his properties would not be distributed. The Court also held that the third farm belonged to appellant's father. With respect to the two farms and a house of

Abdulumminu, the Court held that a compromise had to be reached, since both parties were entitled to the properties. The Court then divided the said properties into two and directed that each of the contending parties should hold one part each in trust until the return of Abdulumminu or his descendant. But none of the parties should erect new structures on the properties, sell or give away any part as gift. The farms were to be used for farming only. Dissatisfied, respondent appealed to the Sharia Court of Appeal. Upon review of the decision of the trial Court, the Sharia Court of Appeal upturned the decision and allowed the appeal. Appellant was dissatisfied and hence appealed to the Court of Appeal Sokoto State. The Court nullified the proceedings of the Sharia Court of Appeal and remitted the appeal to the Kebbi State High Court for hearing in its appellate jurisdiction. Aggrieved further, appellant appealed to the Supreme Court.

ISSUE FOR DETERMINATION

“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/JG/186/2010 as nullity on grounds of want of jurisdiction and consequently struck out the appeal.

HELD (Unanimously dismissing the appeal per

ARIWOOLA JSC)

APPEALS - Reply brief - Filing

1. It is note worthy that the appellant filed a Reply brief of argument to the respondent’s brief of argument, but in it the appellant seems to be rearguing his appellant’s appeal or carrying out some repair works to the earlier argument. It is trite that a reply brief is filed only in response to new argument of the respondent on law that has newly been raised by the respondent but was not touched by the appellant. A reply brief is to deal with a new issue of law or arguments raised in an objection in the respondent’s brief which was not covered by the appellant’s brief.

Where there has been no such new issue or point of law, a reply brief of argument is most unnecessary and anyone filed

in that respect is liable to being discountenanced or ignored by the court. As a reply brief has been held not to be a repair kit to put right any lacuna or error in the appellant's brief of argument. I shall therefore not countenance the appellant's reply brief of argument which has not said anything new from what is contained in his main brief of argument. (p.211 C)

APPEALS - Remittal order - Powers of CA

2. It is clear from the above that the complaint of the appellant in the instant appeal is similar to what this court had in mind in the above case. The remitting of the appeal by the court below to the appropriate court that has jurisdiction to determine the appeal in its appellate jurisdiction, when the court below came to the conclusion, rightly too, that the Sharia Court of Appeal that adjudicated on the appeal lacked competence to hear the matter.

It is therefore a misconception, to say the least, for the learned appellant's counsel to have argued that because the Sharia Court of Appeal could only have made a valid order of transfer of the case before the striking out of same, the court below would also lack the required competence to again transfer the case after it had struck it out. The exercise of the jurisdiction to transfer or remit a case to an appropriate and competent court by the court below, pursuant to its Section 15 of the Act and Order 3 rule 23 of the Court of Appeal Rules was properly carried out.

Therefore, 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, notwithstanding that it has declared the proceedings in the appeal before the Sharia Court of Appeal a nullity on the ground that the said court lacked jurisdiction to entertain the matter.

Accordingly, the sole issue for determination of this appeal is resolved against the appellant. (p.213 F)

REPRESENTATION

Wole Agunbiade, Esq., with Boluwaji Kunlere, Esq., for the

Appellant

Abdullahi Yahaya, Esq., for the Respondent

CASES REFERRED TO

- Odife v. Aniemeka (1992) NWLR (pt. 251) 25
- B Ogundiya v. State (1991) 3 NWLR (pt. 181) 519
- West African Examination Council v. Adeyanju (2008) 97 SCM 173
- Afegbai v. A.G. Edo State (2001) 14 NWLR (pt. 733) 425
- Iyoho v. Effiong (2007) 11 NWLR (pt. 1085) 31
- C Waziri v. Ali (2009) 4 NWLR (pt. 430) 178
- ANPP v. Goni (2012) 7 NWLR (pt. 2908) 147
- Olutola v. UniIlorin (2004) 18 NWLR (pt. 905) 416
- Lado v. CPC (2011) 18 NWLR (pt. 1279) 689
- Ajide v. Kelani (1985) 3 NWLR (Pt.12) 248
- D Abeke v. Odunsi (2013) LPELR- 20640 (SC)
- Korau v. Korau (1998) 4 NWLR (pt. 545) 212
- Abuja v. Bizi (1989) 5 NWLR (pt. 119) 120
- Mozie v. Mbamalu (2006) 12 SCM 11 (pt. 1) 306
- Osuji v. Ekeocha (2009) 10 SCM 72
- E

STATUTES REFERRED TO

Court of Appeal Act (as amended) Cap C36 LFN 2004, s. 15
 Sharia Court of Appeal Law Laws of Kebbi State 1996, s. 14

F

LEAD JUDGMENT BY ARIWOOLA JSC

- This is an appeal against the judgment of the Court of Appeal, Sokoto Judicial Division, (hereinafter referred to as the “Court below”) delivered on the 27th day of June, 2012. The court below had allowed
- G the appeal of the present appellant and set aside the judgment of the Sharia Court of Appeal, Kebbi State, delivered on 30/11/2011. The court below, however remitted the appeal to the Chief Judge of Kebbi State for hearing before the High Court in its appellate jurisdiction. The facts of the case that culminated into the instant
- H appeal go thus:-

The appellant had commenced an action against the respondent at the Upper Sharia Court, Jega, Kebbi State claiming two farms and a house which were the properties of his paternal uncle, known as Abdulmuminu.

It was not disputed that the same Abdulmuminu is the maternal uncle of the respondent. The appellant's action before the Upper Sharia Court, Jega was meant to have the properties in question shared between the parties because the owner Abdulmuminu had been away from home for about sixty (60) years and there was no news that he was alive or that he has children alive or at all. B

In response to the appellant's claim, the respondent contended that indeed there were three farms that belonged to Abdulmuminu - that the third farm to the two being claimed by the appellant was in possession of the appellant. The respondent, however, had no witness to establish that the third farm belonged to Abdulmuminu. But the appellant who contended that the said third farm, which was known as Bakin Gari farm, belonged to his father called two witnesses to prove his claim. However, the testimonies of one of the two witnesses called by the appellant failed to meet the requirements of Islamic law on credibility. The appellant later took oath and proceeded by ablution. C D

The trial Upper Sharia Court, Jega found that since the death of Abdulmuminu had not been confirmed and since his age mates were still alive in his town, his properties would not be distributed until his death was confirmed or his age mates were no longer alive. In its judgment, the Upper Sharia Court held that the Bakin Gari farm belonged to the appellant's father. In regard to the two farms and a house of Abdulmuminu, the court held that a compromise had to be reached, since both parties were entitled to the properties. The court then divided the said properties into two and directed that each of the contending parties should hold one part each in trust until the return of Abdulmuminu or his descendant. But none of the parties should erect new structures on the properties, sell or give away any part as gift. The farms were to be used for farming only. E F G

The respondent being dissatisfied with the decision of the Upper Sharia court, Jega appealed to the Sharia Court of Appeal. Upon review of the decision of the trial Upper Sharia Court, the Sharia Court of Appeal upheld the decision and allowed the appeal in the following words:- H

“Regarding the statement by the Lower court that it did this based on compromise. This compromise is not in order, because

compromise is usually made on the consensus of both parties. But if one side/party does not agree, then there is no compromise.

Based on the foregoing, we at the Sharia Court of Appeal, Kebbi State Birnin Kebbi have revoked the decision of Upper Sharia Court, Jega. The court has held that the farms and the house should be divided into two between the parties. This is contrary to law, We charged (sic) this decision by leaving the issues in dispute to Alhaji Abdulwasiu who was initially in possession of the issues until the return of Abdulmuminu or his heirs, or when death is decided. Then the heirs will be determined and his inheritance will be divided.”

The appellant was not satisfied with the decision of the Sharia Court of Appeal, hence he appealed to the court below and sought an order setting aside the judgment of the Sharia Court of Appeal, Kebbi State and affirm the decision of the Upper Sharia Court. Upon hearing the appeal, the court below considered the main issue of the jurisdiction of the Sharia Court of Appeal and came to the conclusion, inter alia, as follows:-

“Since the Sharia Court of Appeal had no jurisdiction to hear and determine the appeal before it, it acted in futility and its proceedings are a nullity...”

The result is that this appeal has merit and it succeeds on the ground of want of jurisdiction of the Sharia Court of Appeal. It is allowed. The proceedings before the Sharia Court of Appeal in SCA/KBS/JG/186/2010 are declared a nullity in toto. The appeal is struck out. I hereby remit the appeal to the Chief Judge of Birnin Kebbi State for hearing before the High Court in its appellate jurisdiction. No order as to costs.”

The appellant being further dissatisfied with the decision of the court below filed a Notice of Appeal of three Grounds on the 28th day of August, 2012, to this court.

On the hearing of the appeal before this court, the appellant was granted leave to file and argue an additional ground of appeal. Consequently, the appellant was allowed to amend his original Notice of Appeal and the amended notice of appeal already filed was deemed as properly filed and served on 18th November, 2015. In the same vein, the appellant was granted leave to file and serve his appellant’s brief of argument. Accordingly, the appellant’s brief of

argument earlier filed on 28/04/2014 was deemed properly filed and served on 18/11/2015.

Consequently, the respondent's brief of argument which had earlier been filed on 19/9/2014 was deemed as properly filed and served on 18/11/2014 when the appellant's brief was deemed properly filed and served. B

At the hearing of the appeal, Mr. Wale Agunbiade of counsel for the appellant identified the brief of argument settled for the appellant which was deemed properly filed and served on 18/11/2015. Also, the appellant's Reply brief of argument to the respondent's brief was equally deemed as properly filed and served on 18/11/2015. He adopted and relied on both briefs of argument to urge the court to allow the appeal in terms of the relief sought. C

Mr. Yahaya of counsel for the respondent identified the respondent's brief of argument which was filed on 19/9/2014 but deemed properly filed and served on 18/11/2015. He adopted and relied on same to urge the court to dismiss the appeal. D

In the appellant's brief of argument, the following sole or lone issue was formulated from the Amended Notice of Appeal which has four grounds of appeal. E

Issue for Determination

"Whether in the entire circumstances of this case, the court below was not wrong, after it had declared the proceedings in Suit No.SCA/KBS/JG/186/2010 as a nullity and, consequently, had the respondent's appeal before the Sharia Court of Appeal of Kebbi State 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 in its appellate jurisdiction. (Grounds 1 and 4)" F

In the respondent's brief of argument, the following sole issue was distilled also from the Amended Notice of Appeal. G

"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/JG/186/2010 as nullity on grounds of want of jurisdiction and consequently struck out the appeal. (Grounds 1 and 4)" H

Before I proceed to consider the parties' argument on the sole issue for determination, it is interesting to note that the sole issue distilled was from two grounds of the four grounds of appeal contained in the Amended Notice of Appeal filed on 28/04/2014 but deemed properly filed and served on 18/11/2015. In other words, the said lone issue is said to have been distilled from grounds 1 and 4 which means that no issue has been formulated from grounds 2 and 3 of the Amended Notice of Appeal.

The law is already settled, that any ground of appeal from which no issue has been distilled is deemed abandoned and no argument can be countenanced on such ground of appeal, by the court. The grounds are incompetent. In the circumstance, no issue having been formulated from grounds 2 and 3 of the Amended Notice of Appeal, the said grounds are deemed abandoned. Accordingly, the said grounds 2 and 3 being incompetent are liable to be struck out as no argument can be countenanced on them. Appeal is decided on the issues formulated from the grounds of appeal. See *Sylvanus Odife & Anor Vs. Godfrey Aniemeka & Ors* (1992) NWLR (Pt.251) 25; (1992) 7 SCNJ 3371 (1992) LPELR-3439 (SC). *Ogundiya Vs The State* (1991) 3 NWLR (Pt.181) 519 at 532-533; *West African Examination Council (WAEC) Vs. Omodolapo Y. Adeyanju* (2008) 97 SCM 173 at 188 (2008) 9 NWLR (Pt.1092) 290; *Albert Afegbai Vs. A.G Edo State* (2001) 14 NWLR (Pt.733) 425 at 451 (2001) 11 SCM 42. Grounds 2 and 3 of the Amended Notice of Appeal filed by the appellant are struck out.

Now to the arguments proffered by counsel on the sole issue.

Learned counsel for the appellant contended that the striking out of any matter brings the life of that matter to an end and there is no order of court that can be validly made in law in the matter. He cited *Iyoho Vs Effiong & Ors* (2007) 11 NWLR (Pt.1044) 31 at 57; *Waziri & Anor Vs Ali & Ors* (2009) 4 NWLR (Pt.430) 178 at 221.

He referred to the instant case and contended that the nullification of the proceedings in SCA/KBS/JG/186/2010 and striking out of that appeal terminated the life of the appeal and no proper Order could have been made in respect of the same appeal.

Learned counsel conceded that under Section 15 of the Court of Appeal Act (as amended) Cap. C36, Laws of the Federation, 2004, the Court below could exercise the power of the Sharia Court of

Appeal pursuant to Section 14 of the Sharia Court of Appeal Law, 133, Laws of Kebbi State; 1996. He submitted that the time within which that power could be legally exercised had lapsed before the court below made the order to remit the case to the Chief Judge of Kebbi State.

Learned counsel contended that under Section 14 of the Sharia Court of Appeal Law, the transfer of the appeal could only have been validly done before the Sharia Court of Appeal delivered its final judgment in that appeal. And that the transfer could only have been legally done if there was the consent in writing of the Chief Judge of Kebbi State. He submitted that the remittance order of the court below was made without taking into account the clear provisions of Section 14 of the Sharia Court of Appeal Law, hence it is null and void. He urged the court to nullify the said order of the court below which remitted the appeal to the Chief Judge of Kebbi State for hearing by the High Court in its appellate jurisdiction.

Learned counsel contended that it is settled law that a court lacks the competence to extend the statutorily prescribed period for the doing of any Act, unless there are provisions in the statute for such extension. He contended further that in the instant case there is no room in the Sharia Court of Appeal Law for the extension of the time within which the transfer or remittal of the case could have been made to the High Court.

He submitted that the court below could not legally remit the appeal to the Chief Judge of Kebbi State for hearing by the High Court in its appellate jurisdiction. He relied on *All Nigeria Peoples Party Vs Goni & Ors.* (2012) 7 NWLR (Pt. 2908) 147 at 112. He urged the court to apply its decision in the case of *ANPP Vs. Goni & Ors* and hold that the time to effect the remittal of the case had lapsed and there was no jurisdiction in the court below to expand or extend the time by its order. He urged the court to resolve the lone issue in favour of the appellant.

In arguing the sole issue distilled for determination of the appeal, learned respondent's counsel referred to the appellant's case before the court below, also as an appellant and the relief's sought. He also referred to the judgment of the court below, *inter alia* on page 66 of the record and contended that the appellant herein is only complaining against that part of the judgment remitting the appeal to the Chief

Judge of Kebbi State for hearing by the High Court on its appellate jurisdiction.

Learned counsel contended that it is trite law, that the proper order to make where a court finds that a lower court has no jurisdiction to entertain a matter, as in this, is to strike out the appeal. He cited
B Prof. Aderemi Dada Olutola Vs. Unilorin (2004) 18 NWLR (Pt.905) 416 at 459; Senator Yakubu Garba Lado & Ors Vs. Congress for Progressive Change & Ors (2011) 18 NWLR (Pt.1279) 689 at 730.

Learned counsel submitted that when the appellant challenged
C the jurisdiction of the Sharia Court of Appeal to entertain the respondent's appeal he was fully aware that the order that would appropriately be made by the court below if his appeal succeeds, was an order striking out the appeal before the Sharia Court of Appeal, yet he prayed that the appeal be transferred to the High Court,
D Birnin Kebbi for hearing in its appellate jurisdiction, and that having been granted it was not open to the same appellant who had made the request to turn around and attack the grant of the order remitting the appeal to the Chief Judge of Kebbi State.

Learned counsel submitted that the appellant is by his conduct,
E approbating and reprobating at the same time, which conduct, the court has held is not permissible. He relied on Salawu Ajide Vs. Kadiri Kelani (1985) 3 NWLR {Pt.12} 248 at 2691 Dr. Michael Emuakpor Abeke Vs Barrister A. A. Odunsi & Anor (2013) LPELR- 20640 (SC)

Learned counsel referred to a few cases cited by the appellant
F and contended that the facts and circumstances in the instant appeal are completely different from facts and circumstances in the cases cited by the appellant. He stated that, the instant appeal had gone before the court below on appeal from a decision of the Sharia Court
G of Appeal which decided the matter also in its appellate jurisdiction. He submitted that the court below, having found and held that the Sharia Court of Appeal acted without jurisdiction when it entertained the appeal, and therefore its entire proceedings were a nullity, it meant that the appeal had in law not been heard, by a court of competent
H jurisdiction. He submitted further that the court below was right, pursuant to Section 15 of the Court of Appeal Act, as amended to have ordered that the appeal be heard by a court of competent jurisdiction. He cited Safiya Korau Vs. Bazai Korau (1998) 4 NWLR (Pt.545) 212; Alhaji Hassan Abuja Vs Lawal

Gana Bizi (1989) 5 NWLR (Pt.119) 120.

Learned Counsel submitted that pursuant to Section 15 of the Court of Appeal Act (as amended) the powers of the Court below is not limited to the powers exercisable by the Sharia Court of Appeal as provided under Section 14 of the Sharia Court of Appeal Law Cap. 183 Laws of Kebbi State, 1996. The Court below had sufficient powers under Section 15 of the Court's Act to remit the appeal to the Chief Judge of Kebbi State, as it did, for hearing in its appellate jurisdiction, being the court that was competent to hear the appeal on its merit. He urged the court to resolve the sole issue against the appellant but in favour of the respondent and dismiss the appeal.

It is note worthy that the appellant filed a Reply brief of argument to the respondent's brief of argument, but in it the appellant seems to be rearguing his appellant's appeal or carrying out some repair works to the earlier argument. It is trite that a reply brief is filed only in response to new argument of the respondent on law that has newly been raised by the respondent but was not touched by the appellant. A reply brief is to deal with a new issue of law or arguments raised in an objection in the respondent's brief which was not covered by the appellant's brief.

Where there has been no such new issue or point of law, a reply brief of argument is most unnecessary and anyone filed in that respect is liable to being discountenanced or ignored by the court. As a reply brief has been held not to be a repair kit to put right any lacuna or error in the appellant's brief of argument. See Dr. Augustine N. Mozie & Ors Vs Mbamalu & Ors (2006) 12 SCM 11 (Pt. 1) 306 at 320; Osuji Vs Ekeocha (2009) 10 SCM 72 at 88. ***I shall therefore not countenance the appellant's reply brief of argument which has not said anything new from what is contained in his main brief of argument.***

I have carefully considered the sole issue formulated by the appellant to which the sole issue distilled by the respondent is in all respect similar as both issues were respectively distilled from only grounds 1 and 4 of the grounds of appeal filed by the appellant.

However, I consider the sole issue formulated by the respondent as straight to the point being contested by the appellant and I shall therefore use same to determine this appeal.

My Lords, there is no doubt that the court below had jurisdiction and was competent to determine the appeal from the judgment of Kebbi State Sharia Court of Appeal. Indeed, that could not have been the contention of the appellant herein, in view of the clear provisions of the Constitution on the jurisdiction of the court below on appeals from Sharia Court of Appeal. Section 240 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), inter alia, provides as follows:-

“S. 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...”

Indeed, that was why the instant appellant, in the first place filed his appeal before the court for adjudication. However, the only issue being seriously contested by the appellant is the lower court's order remitting the case to Kebbi State Chief Judge which has necessary competence to determine the appeal in the High Court's appellate jurisdiction. There is no doubt that the appellant's counsel did not advert his mind to the provisions of Section 244 of the 1999 Constitution which governs the procedure the court below is empowered to employ in determining appeals to it from the Sharia Court of Appeal. It provides thus:-

“S.244 (1) - An appeal shall lie from the 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 the 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;

(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.”

By virtue of the provisions of Section 244 (2) (b) supra, the National Assembly and the President of the Court of Appeal,

promulgated and made Section 15 of the Court of Appeal Act, 2004, (as amended), and Order 3 rule 23 of the Court of Appeal Rules respectively. This court, when considering the provisions of the 1976 Court of Appeal Act which is *impari materia* with the 2004 Act (as amended) and the relevant Rules of the Court of Appeal in Chief Samuel Adebisi Falomo Vs Omoniyi Banigbe & Ors (1998) 7 NWLR B (Pt.557) 679 at 701 opined 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 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 Vs Eyigebe (1987) 3 NWLR D (Pt.61) 523 at 530, E-G, Igboho Irepo L.G.A. and Another Vs 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 E 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.”

It is clear from the above that the complaint of the appellant in the instant appeal is similar to what this court had in mind in the above case. The remitting of the appeal by the court below to the appropriate court that has jurisdiction to determine the appeal in its appellate jurisdiction, when the court below came to the conclusion, rightly too, that the Sharia Court of Appeal that adjudicated on the appeal lacked competence to hear the matter. F G

It is therefore a misconception, to say the least, for the learned appellant’s counsel to have argued that because the Sharia Court of Appeal could only have made a valid order of transfer of the case before the striking out of same, the court below would also lack the required competence to again transfer the case after it had struck it out. The exercise of the H

jurisdiction to transfer or remit a case to an appropriate and competent court by the court below, pursuant to its Section 15 of the Act and Order 3 rule 23 of the Court of Appeal Rules was properly carried out.

Therefore, 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, notwithstanding that it has declared the proceedings in the appeal before the Sharia Court of Appeal a nullity on the ground that the said court lacked jurisdiction to entertain the matter.

Accordingly, the sole issue for determination of this appeal is resolved against the appellant.

In the final analysis, I hold that this appeal is devoid of merit. It deserves to be dismissed. It is hereby dismissed. The decision of the court below in its entirety is affirmed.

I make no order as to costs.

I. T. MUHAMMAD JSC

I read before now, the Judgment just delivered by my learned brother, Ariwoola, JSC. I agree with his reasoning and conclusion. I too dismiss the appeal and affirm the Judgment of the Court below. I make no order as to costs.

MUNTAKA-COOMASSIE JSC

The Court of Appeal Sokoto Division herein after referred to as lower court on 27/6/2013 delivered its judgment in which the appeal against the judgment of Sharia Court of Appeal, trial court for short, was allowed. The judgment of the trial court was set aside. The Kebbi State Sharia Court of Appeal now trial court delivered its judgment on 30/11/11. The lower court however ordered for the remittal of the appeal to the Chief Judge of Kebbi State for hearing before the High Court in its appellate jurisdiction.

Dissatisfied the appellant appealed to this court. The brief were duly filed and exchanged. Issues were distilled by both parties. Submissions on the issue were made and received by this court.

Hon. Olukayode Ariwoola JSC, prepared his lead judgment which I was allowed to read before now. I agree with the reason for dismissing the appeal. I too hold that the appeal is devoid of any merit it is therefore dismissed.

B

GALADIMA JSC

I have been obliged a copy of the Judgment of my Learned Brother OLUKAYODE ARIWOOLA JSC, just delivered. I entirely agree with him that this appeal is lacking in merit. I too, dismiss same. I make no order as to costs.

C

M.D. MUHAMMAD JSC

I had a preview of the lead judgment of my learned brother D Ariwoola JSC, just delivered. I entirely agree with his lordship that the appeal lacks merit. I dismiss same and abide by the consequential orders made in the lead judgment including the order on costs.

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