

TITLE PAGE

ANALYSIS OF JUDGEMENT OF SHARI'AH COURTS IN
MAIYAMA LOCAL GOVERNMENT AREA OF KEBBI STATE

BY

MARAFI IBRAHIM ABBAS

ADM.NO: 1011103123

BEING A RESEARCH PROJECT SUBMITTED TO THE
DEPARTMENT OF ISLAMIC STUDIES, FACULTY OF ARTS
AND ISLAMIC STUDIES, USMANU DANFODIYO
UNIVERSITY, SOKOTO. IN PARTIAL FULFILMENT OF THE
REQUIREMENT FOR THE AWARD OF BACHELOR OF
ARTS DEGREE, B.A (HONS) IN ISLAMIC STUDIES.

OCTOBER 2015

APPROVAL PAGE

This research project has been carefully supervised, read and found to have satisfied one of the necessary requirement in partial fulfillment for the award of Bachelor of Art (B.A HONS) Degree in Islamic Studies of Usmanu Danfodiyo University, Sokoto.

Dr. Lawal Abdulkareem
Project Supervisor

Date

Prof. M.M Dangana
Head of Department

Date

External Supervisor

Date

DEDICATION

This work is dedicated to my lovely parents Late Alhaji Ibrahim Marafan Sabon Sara, and, Malama Amina Auwal and to my great Teacher late Sayyadi Malam Haruna Sheikh Abubakar Mungadi. May Allah bestow on them His mercy as they did bring me up when I was young.

ACKNOWLEDGEMENT

I wish to begin by expressing my immense gratitude to Almighty Allah for seeing me through the course of my studies and making it possible for me to carry out this research project successfully.

I owe a special appreciation and gratitude to my humble and learned supervisor Dr. LawalAbdulkareemthe Deputy Dean faculty of Arts and Islamic Studies for taking all the pains in going through this research correcting all the shortcomings in it in order to make this work viable. May Allah increase him in knowledge and reward him abundantly.

My sincere thanks also goes to all the lecturers of the department of Islamic Studies Faculty of arts and Islamic studies who nurse and lectured me from the beginning of my studies to my graduation, may Allah reward them abundantly.

I would like to show my appreciation to all the members of my family, my father late Alh. Ibrahim Marafan Sabon Sara, my mother Malama Amina, Yaya Jafar Marafa, Bello Marafan Sabon sara, Malam Haruna, Auwal, Sani, Ashiru and Bashar Marafa and to my Sisters, Azumi, Zahara, Sa'adatu, Ummulkhulsum, Jamila and Saudatu Marafa for their kindness patience and the moral support they accorded me in the course of my studies.

I wish also, to acknowledge the moral support, encouragement and assistance I received from S/KabinJegaAlh. Muhammad Arzika, S/YakiKaraye, Mrs. Rakiya Bello, Haj. HalimahAlh. Tahir Musa, Haj. Suwaiba and my great teachers SayyadiSheikh HarunaMungadi and SayyadiMalamAliyuSesa Sheikh DaudaFass my Allah reward them with Jannat al Firdausi. Ameen.

I also extend my appreciation to all the members, staff and students of Madarasatu Qira'atil Qur'an Wal'ilm Wattarbiyatil Islam Life-Camp Abuja for their encouragement, support and brotherly advice.

Finally I wish to thank all friends, Sanusi Usman, Alh. Habib Auwal Umar Mungadi and many others as well as well wishers who offered assistance and encouragement in one way or the other during my course of study and for making this project to become a reality.

Special regards to my lovely wife Aishatu Alh. Muhammad Dangwaggo for her contribution and understanding.

Abbas Ibrahim Marafa.

TABLE OF CONTENTS

Title page.....	i
Approval page	ii
Dedication.....	
iii	
Acknowledgement.....	iv
Table of cases	v
Table of content	
vi	

CHAPTER ONE: INTRODUCTION:

1.1 Background of the study.....	
1-5	
1.2 Scope and Limitation.....	6

1.3 Statement of the research problem.....	
6-7	
1.4 Significance of the study.....	7
1.5 Aim and Objectives.....	8
1.6 Methodology	9
1.7 Structure	
9-10	
1.8 Literature Review.....	10-
14	
Endnote of chapter one.....	15-
16	

CHAPTER TWO: THE CONCEPT OF SHARI’AH DURING THE

EARLY PERIOD OF ISLAM

2.0 Introduction.....	17-
18	
2.1 Judgment during the time of prophet	
Muhammad (S.A.W)	19-
21	
2.2 Judgment during the time of the Second Caliph	

Umar (R.A). 21-
27

Endnote of Chapter Two..... 28

**CHAPTER THREE: BRIEF HISTORY OF SHARI’AH
COURTS IN MAIYAMA LOCAL GOVERNMENT OF KEBBI
STATE:**

3.1 Brief history of shari’ah courts in maiyama local
government 29-
31

3.2 Historical Background of Maiyama local
government.31-35

3.3 Structure of the Courts.....39-
40

3.4 Jurisdiction of the Courts..... 40-
43

3.5 Courts location and number of cases found..... 43-
44

3.6 Analysis of some cases found in some of the
courts..44-68

Endnote of chapter
three.....69-70

**CHAPTER FOUR: MODE OF JUDGMENT OF SOME
CASES FOUND IN THE COURTS.**

4.1 Introduction.....71-
72

4.2 Mode of Instituting the claim.....73-
76

4.3 Mode of Judgment Of Cases.....76-
84

4.4 Decision of the courts as regards to the cases.....
84-86

 Endnote of chapter four.....87-
89

CHAPTER FIVE: SUMMARY AND RECOMMENDATION.

5.1 Summary.....90-
93

5.2 Recommendation.....93-
100

 Bibliography.....10
3

TABLE OF CASES

- Hauwa’u YarShehuVs Dan Bello Musa CVA/24/2014
15/05/2014.
- Alh. AbaraKarayeVsHasanaAlh. AbaraKaraye>
CV/USC/MyM/29/2003 30/5/2003
- Bello Na’abuVs Maryam Shehu CVA/15/2011,
03/05/2011.
- Adamu D/Madugu S/Sara VsHamidu D/Daji S/Sara
CR/02/2013, 6/02/2013.
- Abdulkadir Muhammad
KambaVsAhmaduUsmankam CV/22/9/2014,
24/10,2014.
- COP VsSama’ilaAlhasanMaiyama CR/24/2012,
16/102012
- Malam Ibrahim KawaraVsSa’iduDogoKawara
CR/3/6/2013

- HannatuIsyakuVsABdulkrahman Musa Mungadi
CV/19/10/2014. 24/11/2014
- HabibaSani Saran dosaVsRuwanBarkiWurogauro
CV/08/2005, 14/7/2005
- ArzikaMAishago Mai kwarivsRuwanBarkiWurogauro
CV/08/2005, 14/7/2005
- Fadimatu Isa karayeVsUsmanLabboKaraye
CV/Sh/KRY/32/2010 – 27/4/2010
- Zainabu Abu VsAbdulkadirAbdullahi CV/19/2012 –
23/2/2012
- Sahmsiyya Bello Kurunkudu Vs Manu
AuduKurunkudu CV/06/2015
- HaliraSaiduR/FiliVs Manu D/Tumba CV/93/2014,
28/11/2014
- COP AminuAbubakarVs Abdu;-azizHaruna
CV/09/2014, 21/01/2014
- MaryamuAdamuvSAIh. Nura D/Daji CV/12/2014,
3/10/2014

CHAPTER ONE:

INTRODUCTION.

1.1 Background of the Study.

All praise is due to Allah the Most High, the Creator of man, the Law giver, He who guides to the Straight path which leads to salvation for those who follow it and to the hellfire, for those who deny it, peace and blessings of Allah be upon His noble Prophet whom we are commanded to follow his footsteps. His companions and those who follow them to the day of Judgment. Islam is a religion and way of life based on the commandment of Allah contained in the Holy Qur'an and Sunnah of the Prophet Muhammad (S.A.W.) and a complete way of life that encompasses all aspects of muslimendeavour of which the issue of judgment is a type. In this regard Allah the Almighty says:- We neglected nothing in the book¹. It equally means a total submission to the wills of Allah the Almighty. This submission should be continuous act until death. Allah says:

..... And Worship your Lord until there comes to you the certainly (i.e death)²

Shari'ah has been described as "corpus jurist in Islam". In other words it is a collection of laws. It

distinguishes between what is Halal and Haram (lawful and Unlawful), as well as Punishments and rewards of rightful and wrongful actions. It is a path through which mankind reaches a mutual existence with Allah, himself and the rest of mankind³.

Qur'an and Sunnah are the two Primary sources of Shari'ah, once any Law contradicts the above two primary Sources of Shari'ah such a law is regarded null and void. In fact it carries no weight in Islam and should be done away with. Allah says.

*"Then we made for you a law follow it and do not follow the fancies of those who have no knowledge"*⁴

Islam as a religion, comprehensively deals with all aspects of life. Its rules and regulations are based on the commandments of Allah as contained in the Qur'an and Sunnah of Prophet Muhammad (S.A.W) Every Muslim is under obligation to fashion his entire life in accordance with the dictates of the Qur'an and Sunnah.

Judgment in Shari'ah aims at deciding between, litigants justly with the aim of settling their disputes in accordance with the Injunctions of the divine law⁵. Therefore, the issue of administering judgment in Islam is a very difficult and sensitive area of Shari'ah. This is due to some obvious reasons, firstly: many judges pass judgment on cases either they do not have knowledge on the matter or they treat the matter wrongfully or they follow their selfish interest in passing out judgment⁶.

Secondly, Justice or judgment is an attribute of the Almighty. (Al-Hakeem) the Judge and one who renders judgment and man as vice-regent of Allah on earth is saddled with that responsibility⁷.

Islam has given great importance to justice which must be done at all cost. Those who administer judgment (judges) must not only be men of deep insight, profound knowledge of Shari'ah, but they must also be Allah-Fearing, forthright, honest, sincere men of integrity⁸.

Allah the Most High says:

*"Allah commanded you to render back your trust to whom they are due and when you judge between man and man, that you judge with justice."*⁹

The Prophet (S.A.W) in corroborating the above verse said:

*"The Qadis are of three types. One type will go to Paradise and the remaining two will end up in the hellfire. The person who will go to paradise is one who understood the truth and judge accordingly. One who judge wrongly after understanding the truth, they will go to hell. Likewise, Qadi who judge in ignorance also will go hell."*¹⁰

In another report, the Prophet says:

*(One who is given this responsibility to be a Qadi (Judge) is as if he is slaughtered without a knife)*¹¹.

It is my belief, that the main cause of disputes or litigation in our courts specifically courts in Maiyama Local Government may not be unconnected with the lack of even a rudimentary knowledge of Shari'ah by a large number of Muslim jurists i.e judges in Shari'ah courts, also to draw the attention of the judges as to the challenges before them as far as Judgment is concerned. Similarly, the judges should bear to tell Allah on why they cannot discharge the duties properly.

However, in this research work, I am mandated to check and analyze the Judgment passed by the Shari'ah courts in Maiyama Local government. Before it and how it issues its final decision.

1.2 Scope and Limitation

The research work as the title apparently shows is restricted to Analysis of judgment of Shari'ah courts of MaiyamaLocal government. It should be noted that, it is the judge that has the power to pass out judgment in the Shari'ah court of which he play a very crucial role in Muslim society. Hence the research will limit itself to some selected Shari'ah courts in Maiyama local government¹².

1.3 Statement of the Research Problem.

For any research project embarked upon, their must have been a foresight of the gains to be expected. This research project is intended to examine the main overriding agents engendering for the hindrance of judgment in Shari'ah courts of Maiyama local government.

Administering of judgment in Islam means giving everyone his due right, or to place something in its rightful place according to the laid down rules of Shari'ah.

However some of the problems as far as the issue of judgment in Shari'ah courts of Maiyama local government is concerned include:

- 1- Inability to execute punishment after passing judgment (conviction).
- 2- Undue external interference has rendered the judicial system unjust and ineffective. i.e government, politicians and rulers and wealthy individuals.
- 3- Another important factor is the issue of appointing the judges. The proper channel of appointing knowledgeable, capable, competent and qualified people is left.
- 4- In addition physical structure of the courts, undue intimidation and unbecoming financial request including uncondusive environment for the dispensing justice, has become the order of the day.

1.4 Significance of the Study

This work is of paramount significance in the sense that it can serve as a source material in bringing reform in our Shari'ah judicial system.

The research as well can serve as a source materials to the students particularly those in the department of Islamic studies.

Similarly the research can go a long way in awakening and drawing attention of the judges to the issue of administering judgment.

Equally the students of Islamic legal system can find this work very useful.

In addition the research work is soundly significant because there is in it a lot that will increase one's level of knowledge and civilization as regards judgment in the Shari'ah courts.

1.5 Aim and Objectives.

As far as this research work is concerned, certain aim and objectives were targeted: one to draw the attention of the judges that the fear of Allah should be their utmost concerned in passing out judgment and the right of Allah upon them as well as the right of the people.

It also aim at given my own contribution as a student of Islamic studies in finding out how the Shari'ah courts (especially in Maiyama) administered judgment so as to bring about a positive change in Shari'ah judicial system.

In addition the judges should remember that the issue of administering Judgment is not an easy tax, therefore it is always preferable for one to refuse to accept the office if he knows that he cannot discharge such duties properly, or he is even incompetent.

1.6 Methodology:

The procedures and methods adopted in the course of this research is by the use of both primary and secondary data.

The primary data consulted are based upon the series of interviews and oral Information collected from different people ranging from learned lecturers,Ulama down to judges and litigants where necessary, also some record books of Shari'ah courts such as the civil and criminalwere used as primary data of this work.

The secondary sources material consulted include library documents like the glorious Qur'an, Sunnah, textbooks, paper presentation, projects; internets, manuscripts, that are of direct relevant to the area of the research.

1.7 Structure

The whole work is characterized in to five chapters namely:

Chapter one centered at background of the study, scope and limitation, statement of the research problem, significance of the study, Aim and Objectives,

methodology, Structure of the research work and lastly literature review.

Chapter Two Comprises of the concept of Shari'ah during the early period of Islam judgment during the time of Prophet Muhammad (S.A.W.) and a glance at Judgment during the time of the second Caliph Umar (R.A).

Chapter Three covers a brief history of Shari'ah courts in Maiyama local government area of Kebbistate a historical background of Maiyama local government, structure of the Shari'ah courts, jurisdiction of the courts and courts location and number of cases found. As well as an analysis of some cases found in some of the courts.

Chapter four glances at the mode of judgment of some cases found in the court, an introduction, mode of instituting the claim, mode of Judgment of cases and decision of the courts as regards to the cases.

Chapter five comprises of: summary and recommendation

1.8 Literature Review

This is an analytical evaluation of the materials relevant to the area of study which was consulted for the effective viability of the research.

Those materials which I used in my research are based on Islamic Law and other relevant books to make my work very clear and precise content.

Many schools of intellects had written prolific literature discussing something pertaining to the area of this research as a topic and not as a whole work. For example: Abdul-Rahman I. DOI (2009) had written a book titled: "Shari'ah the Islamic Law" in it, he exploited clearly many forms of crime and their punishment according to the teachings of Islam and Sunnah of the Holy. Prophet Muhammad (S.A.W.). Also he went further to provide examples of some cases administered during the period of the Prophet as well the period of the second Caliph Umar (R.A) not only that, he also discussed the procedure and conditions to be considered before a judge passed his judgment.

Another book consulted was the "IhkamulAhkam" This is the Islamic book from the "TuhfatulAhkam" which comprises Ahkamulfighya. This book is called the book of adjudication in Islamic court. It explains how case can be instituted and trial in the Islamic court. This book is given certain legislation based on Islamic law¹³.

S.O Rabi'u Similarly, a lecture note on Islamic law of evidence by Dr. S.O Rabi'u 2013 was consulted. This note contains all the aspect of adjudication matter in Shari'ah court under Islamic Law¹⁴.

Shad Hamid (August 2003) 'An Islamic Alternative?Equality, redistributive justice and the welfare state in the caliphate of Umar" Renaissance monthly Islamic journal (pp 628. This journal has provided explanation on the system of justice and administration of Judgment during the period of caliph umar¹⁵.

Also the Shari'ah courts civil and criminal record books of MaiyamaKaraye, Mungadi and Andarai were

visited. This is were all the cases relevant to this project were obtained¹⁶.

In his L.L.B. Project Aliyu Muhammad Danzaki (2003) Titled. Analysis of Adjudication of marriage cases, in upper Shari'ah court Yabo. He explained the mode of adjudication of marriage cases in Shari'ah courts, mode of instituting a claim and how a Shari'ah court pass its Judgment of cases before it¹⁷

Similarly, in his L.L.B Project Muhammad Nasiru (2013) Title: the office of a judge from Islamic Point of View, a look at contemporary Shari'ah courts he explain the Historical development of Shari'ah courts, The judicial Principle as enunciated by caliph Umar, characteristics of Islamic court, composition of Shari'ah courts, as well as cases that Shari'ah courts entertained¹⁸.

Another important material reviewed was "The report of Shari'ah implementation committee (2003) kebbi state. This report provides information as to the structure, nature,, details of courts Location and details of cases

recorded in each Shari'ah court in Kebbi State. In short this report has explained all that is required as far as Shari'ah court is concerned¹⁹.

Obilade: in this book the writer provided legal system of Nigeria, which he took about the system of the court in Nigeria, which my area is on the system of court when explaining the history of the court²⁰.

Another material relevant to this work is "Sahih Muslim English translation book 15 "Kitab al-Hudud, in it punishment of an adulterers/adulteress and instances where the Prophet has store and adulterers/adulterers to death where explained²¹.

END NOTES FOR CHAPTER ONE

CHAPTER TWO

THE CONCEPT OF SHARI'AH DURING THE EARLY PERIOD OF ISLAM.

2.0 INTRODUCTION

Prophet Muhammad (S.A.W.) was the number one Muslim and the greatest epitome of Islam. The religion of Islam was sent through him. Islamic courts are therefore rooted from him. With the establishment of Muslim community in Madinah, an agreement was quickly reached between the Muslim and non-Muslim living in Madinah and its territory. Part of the agreement was that Prophet Muhammad should be the head of state and the head of government, and in the event of any dispute or disagreement arising between individuals and or group which cannot be settled, then it should be referred to the Noble Prophet (S.A.W.), for judgment.

Similarly, it was agreed to regard respect and recognize the rights and dignity of all citizens, Muslims or non Muslims. These rights include protection of lives and properties, protection of religion among others if at any point, one interferes with one's right or property, the noble Prophet is the judge to administer judgment.

Once again, when the Prophet was delivering the farewell pilgrimage, he delivered a sermon which is full of religious teachings and injunctions. He was reported to have said:

"Oh you people, listen well, for I do not know whether I shall be among you here next year. Oh people, it is prohibited upon you blood of your brother and their properties up to the Day of Judgment. Among you who ever is entrusted with a trust should returned it to the rightful owner. Never do injustice and do not let anyone cheat you. Besides, there is a right of you upon your wives and vice-versa. A Muslim. It is not allowed upon Muslim to collect anything from somebody without his personal will and consent.²².

This in addition to Prophets actions who laid a foundation stone to Islamic legal system and principles governing it, in the early period of Islam.

2.1 Judgment during the time of Prophet Muhammad (S.A.W.)

The Prophet (SAW) asked people to be just and kind as the supreme judge and arbiter, as the leader of the Muslims, as generalissimos of rising power, as a reformer an apostle, he has always looked in to the affairs of people.

He used to deal with different kinds of tribes, but when administering judgment he never deviated from the path of justice. In carrying out judgment; he made no distinction between believers and non believers, friends and foes, high and low. From many instances reported in the traditions relevant to this matter in Question; a few are given below:

A woman of the Makhazoom family with good connections was found guilty of theft. For the prestige of the Quraish, some prominent people including Usamah Ibn Zayd (R.A) interceded to save her from punishment. The PROPHET refused to condone the crime and expressed displeasure saying²³:

Many a community ruined itself in the past as they only punished the poor and ignored that offences of the exalted. By Allah, If Muhammad's (my) daughter Fatimah would, have, committed theft, her hand would have been severed"²⁴.

In another tradition:

Abdullahi Ibn Sahl was deputed to collect rent from Jews of Khaybar His causing Mahisah accompanied him but, on reaching khaybar, they had separate. Abdullahi

was waylaid and done to death. Mahisa reported his tragedy to the Prophet (S.A.W) but as there were no eye witnesses to identify the guilty, he (S.A.W) did not say anything to the Jews and paid the blood money out of state revenue²⁵.

Similarly:

"The Jews, in spite of their hostility to the Prophet (S.A.W) were so impressed by his impartiality and sense of justice when administering judgment that they used to bring their cases to him and he (S.A.W) decided them in accordance with Jewish law.²⁶ (Abu Dawud)

It was reported from Ummu Salmah that, the Prophet (S.A.W) said:

"You bring cases before me for my decision and one of you intended the proofs of the other and I decided it accordingly on the evidence but to those in whose favour I give judgment concerning any the right of his brother let him not take it for lonely, cutoff for him a place of fire:²⁷

From the above; we see that in the period of the Prophet, the Prophet was the leader and the chief judge who administered judgment. Similarly, judgment during this period was purely based on justice and the principles

of Shari'ah. No distinction is made when passing judgment between believers and non believers, friends and foe, high and low and law this can be seen clearly in the sense that even he (S.A.W.) must beloved daughter (Fatimah) is not excluded if she should commit any crime she would be punished.

2.2 JUDGEMENT DURING THE SECOND CALIPH UMAR (R.A)

The companions who were the custodian of sunnah, the second best primary source of Islamic Law, had seen the Prophet deciding cases of various natures and degree of compulsion, and have therefore, no problem what, so ever, they acted as legislatures, judges as well as jurists throughout their period.

The remarkable event in the history of Islamic judicial system, in the history of the companions was for the first time in the history of Islam, the establishment of courts separate from the palace was in the reign of the second caliph umar bin al-khatabi (R.A), who reign between 634-644).

During Umar's period he made judiciary to be independent and declared it sovereign state organ that could proceed without any pressure of state. No one is exempted from the law, not even the caliph himself. During the early years of his rule he also acted as a chief Justice, of Madinah but later due to increasing burden of work he assigned his office to someone. He accordingly appointed Abu-Dardah. Umar was the founder of fiqh (Islamic Jurisprudence). More than one thousand juristic pronouncement of Umar are on record. Umar laid down the principle of Qiyas (logical deduction) he also enunciated numerous rules about inference and generalization of law which form the basis of Islamic jurisprudence. In one of his instruction to judges, Umar was reported to have said:

"When you do not find a judgment on an issue in the Qur'an or Hadith and you are in doubt about it, ponder over the question and ponder again then look for dicta on like and similar issues, and decide accordingly".

Umar was very keen in appointing judges that he considered some important issues before appointing a judge among which include:

- ❖ He must be well reputed for his morals, modesty and interpersonal relation.
- ❖ Must be intelligent.
- ❖ Must be highly qualified in fiqh.
- ❖ Must be socially powerful and influential personality so that he might not come under pressure of any powerful perpetrator.

Again, for effective administration of judgment; Umar appointed judges with high salaries and for lifelong tenure. This as in modern time, was to make sure that judges could not be drawn towards bribery and a non prejudice and unbiased judgement could be reached. Umar also held that in the court the judge should not be praised and that all act should be judge according to public interest.

Similarly, umar issued some special instructions and code of conducts to be followed in the courts according to which judges were instructed to deal with rich and poor alike in the court in one such letter to his judge in Iraq umar has been quoted saying:

"When prosecutor and defender appear before you then demand even handed evidence from them, be so benevolent to the weak that it will bolster him and, he could say everything that is in his heart and to hearten the poor²⁸. Beware that if you will not be like this to poor and weak, they will put down their right, and will go away and responsibility of his discrimination with him lays with one who didn't be gentle to him".

In addition in one of the memorable letter of Sayyidina Umar written to Abu Musa on the eve of his appointment as Qadi; which outlines the functions and responsibilities of a Muslim judge and is equally relevant even today. Among other things he said in the letter.

"Try to understand the depositions that are made before you. Because it is useless to consider a plea that is not valid consider all equal before you in the court and (consider them equal) in giving you attention to them, so that the highly placed, people may not expect you to be partial and the humble may not despair justice from you. The claimant must produce evidence. An oath must be taken from the dependants it is permissible to have compromise among Muslims, but not an agreement through which Haram (unlawful) would be made to Halal (lawful) and vice-versa. If you have given a judgment yesterday and today you may arrive at the correct opinion upon re-thinking, you must feel prevented from retracting from your first judgment because, justice is primeval, and it is better to retract than to continue in error. Use your own individual judgment about matters that

perplex and about which neither an answer is found in the Qur'an and sunnah. Know the similitude and weigh the issue accordingly (here Abu Musa is asked to use individual judgment and arrived to a logical conclusion through the use of Qiyas and Ijma'a). If one brings a claim, which he may not be able to prove, decide a time limit for him if he produces evidence within the time-limit set (by you), you should allow his claim, otherwise you are at Liberty to give judgment against him Good bye²⁹.

The teachings of this letter are numerous particularly to rulers and judges the letter guides judges as to the manner of establishment of justice.

In many occasions Caliph Umar was reported deciding cases of various nature and giving out judgment and awarding punishment. In one of such occasions, he gave his second son punishment of adultery.

"One day he passed by the house of a Jew, who drank and got intoxicated. He saw a sleeping woman and committed fornication with her, she became pregnant when she got a son, she came to the Prophet's mosque and placed the child in caliph Umar's camp saying: O commander of the faithful, take this child as you have

greater right over him than myself. Then she told him that it was the child of his son Abi Shamhah Caliph Umar asked her whether it was legitimate, the lady replied. From my side, it is legitimate. Then she told the whole story. They went home and confirmed from his son that he had committed the offence. Then the caliph took him to the mosque of the Prophet and a punishment of hundred lashes was given to him as a result of which Abi shamhah died³⁰.

Caliph Umar took special care and precaution to maintain equality in the administration of justice. He wants everybody, irrespective of social economic background to be treated equally in the court of law.

These are the valued principles necessary to adjudicate justice and make courts function impartially as well as in a just and equitable way. Therefore, at this point we can deduce, that the main characteristics of judgment during these two periods are:-

1. Justice

2. Equality before the law and
3. Independence of the judges.

END NOTE FOR CHAPTER TWO:

CHAPTER THREE

BRIEF HISTORY OF SHARI'AH COURTS IN MAIYAMA
LOCAL GOVERNMENT AREA OF KEBBI STATE.

Kebbi state is one of the 36 states in Nigeria existing in Northern part of Nigeria, also Maiyama Local Government is located in Kebbi Central Senatorial Districts.

Although, due to the heterogeneous nature of Nigeria, it has been divided into Southern and Northern Regions³¹. And also each region has the applicable law and the applicable courts that apply such law. In southern part, the existing law was the customary law and the courts governing that law was the customary courts with different grades³²

While in Northern Part of Nigeria it was the area courts³³ which determine and govern the dispute between

the members of that area in all the states where area courts exist, (i.e. Bauchi, Borno, Gongola, Kaduna, Kano, Kwara, Niger, Kebbi and Sokoto). The area court legislation is in general uniform³⁴.

Following the enactment of area courts edict of 1967, four grades of Area court were created i.e. upper area courts, area courts grade one, area courts grade two and the area court grade three.

The provision of the Law Provide that:

*"There shall be three grades of Area courts, namely upper area courts grade I Area courts grade II, and Area courts grade III. And the jurisdiction and power of an Area courts shall not subject to the provisions of subsection (2) exceed those prescribed in the first scheduled in respect of each grade"*³⁵

Following this provision, with the implementation of Shari'ah in Northern part of Nigeria, and Shari'ah implementation in Kebbi state in October 2003 by the administration of Governor Adamu Aleiro, all area courts in Kebbi State were changed to Shari'ah courts with Shari'ah

penal code.³⁶ For example Zamfara State, Kano, Sokoto, and Kebbi state e.t.c

However, Kebbi state was divided into five judicial zones namely:

- i. BirninKebbi Judicial Zone
- ii. Argungu Judicial Zone
- iii. Bagudo Judicial Zone
- iv. Yauri Judicial Zone
- v. Zuru Judicial Zone.

Maiyama local government falls under the Birninkebbi Judicial Zone with the following number of Shari'ah courts namely:-

- i. Upper Shari'ah Court Maiyama town
- ii. Shari'ah Court in karaye district
- iii. Shari'ah Court in Mungadi District
- iv. Shari'ah Court in Andarai district
- v. Shari'ah Court in Sambawa district.³⁷

3.1 HISTORICAL BACKGROUND OF MAIYAMA LOCAL GOVERNMENT AREA:

Maiyama local Government is one of the twenty one local government areas of Kebbistate. It was created in April, 1989 by general Ibrahim Badamasi Babangida, the then military head of state. The administrative headquarters of the L.G is Maiyama town; located 16kms from Jega on Jega–Yauriroad. The Geographical location of the L.G.A is within 12^oN and 4^oE. The local government is located south of BirninKebbi town with the following bordering LGA's: North–BirninKebbi and KalgoLGA, East–Jegaand Kebbe LGAs where Kebbe is in Sokoto state, South Kebbe and Koko/Besse LGAs, West – Zuru and Bunza LGA. Maiyama LGA is located in a tropical grassland vegetation zone of Northern Nigeria. The topography of the LGA is characterized by a flat land dotted with hills of latriterocksare crop more common in Maiyama, Mayaloand Karaye districts. There is spread of guile formations in many areas of LG due to soil erosion. It has a savannah vegetation and is more natural in Andarai District.

The landmass of the LGA covers an area of 1450.75km², that is 4.56 of the total Land mass of Kebbi state, which is 35293km². The annual rainfall is 500mm with average temperature of 29.C.

Agricultural activities in MaiyamaL.G.A are all year round involving rainy and dry season farming. And food crops produced are mainly millets and corns while cash crops include: Onion, groundnut, tomato, paper, sweet potatoes and beans.

The population as by 2006 head count is 175686 in total. Males 85844 and females 89842, with population density of 121 persons/km².

The tribes of the LGA are entirely Hausa and Fulani (indigenous population) and Hausa Fulani culture.

The religion of the people in Maiyama Local Government is Islam and the LGA consist of 5 districts only namely:

1. MaiyamaDistrict – Sarkin – KudunMaiyama

2. Andarai District BununAndarai
3. KarayeDitriectSarkinYakin Karaye
4. Mungadi district SarkinMungadi
5. Mayalo district SarkinYammanMayalo

There are eleven administrative wards in the LGA and a total number of 64 public Primary schools, one private nursery and primary school and 8 secondary schools. Health dispensaries are found in all the wards of the LGA and a general Hospital and few private clinics. In terms of water supply, the people in the area mostly rely on wells, boreholes and hand pumps. Most of the roads network linking Maiyama with its districts are untarred.

In terms of western education, very few were exposed and there is still apathy on the part of parents to send their children to schools especially the girl child education. However, there is an appreciable rate of Qur'anic knowledge among the people of the area. The major economic activity in the area is farming which is done at subsistence and commercial level but majority of the

people in the area are faced with common development challenges of poor infrastructural facilities, poor health and educational facilities among others³⁸.

3.2 Structure of the Courts

Apart from the creation of upper Shari'ah Court, it started from the upper area court and also an area court in a state established by a warrant by the chief judge of the state³⁹

However, the provision of the law provided the structure of the Shari'ah courts as follows:

"The Islamic Shari'ah courts over the offences are classified in to three:

- a. Shari'ah courts of Appeal
- b. upper Shari'ah courts
- c. lower Shari'ah courts.⁴⁰

Due to the above, the structure of Shari'ah courts in Maiyama local government from lower Shari'ah courts which is constructed by a single judge sitting alone and

to upper Shari'ah courts which constitute by a judge (i.e. presiding judge) and one judges as his assistant⁴¹.

In addition, when a case is brought in the first instance, it usually presided over by the single judge in the lower Shari'ah courts, but in the a case of appeal, the number of judges will increase two – three at once to determine it at the upper Shari'ah courts – similarly, the complexity of a case may warrant and necessitate the requirement of a jury to assist the judge before passing the judgement.

3.3 Jurisdiction of the Courts.

The Shari'ah courts have jurisdiction to hear and determine civil matters and cases where the parties are muslims and in criminal offences where the suspect (s) or accused person(s) is are muslims or persons(s) who voluntarily subject him/themselves to the jurisdiction of the Shari'ah courts⁴².

However, as this regards Shari'ah courts in Maiyama is empowered by law to decide all civil and criminal

matters within its jurisdiction including any proceeding involving:

1. Marriage under Islamic law (al-nikah).
2. Guardianship and maintenance (al-kafalawa al-Nafaqa)
3. Succession (mirah), will, (wasiyyah), Gift (Hibah), endowment (Waqf), pre-emption (shufah and trust (amanah).
4. Land law (hokum nizam al-Ard).
5. Contract (al-Aqd).
6. Tort (Al-Diyya).
7. Commercial law (Ahkam al-Buyu).
8. Partnership and company Law.

Similarly the Shari'ah courts shall be competent to try all criminal cases involving.

1. Homicide (Qatl al-nas)
2. Rubbery (al-muharaba)
3. Theft (as – sariqah)
4. Deformation (al-Qadhaf)

5. Drunkenness (sharb al- khamr)
6. Causing grievous hurt (al-Qisas)
7. Homosexuality (al-Liwat)
8. Adultery (al-zina)
9. Lesbianism (al-sihaq)
10. Bestiality (wad al-Bahima)
11. Offering and receiving gratification (al-Rishw).
12. Giving false evidence shahadat al-zur)
13. Mischief (al-fasad)
14. Criminal breach of trust (al-khiyamah)
15. Cheating (al-gish)
16. Receiving stolen property
17. Perjury (al-Tawir)

Similarly, something very impressive was that before Shari'ah implementation lower courts have very limited jurisdiction in terms of criminal offences and could not try homicide cases. However with implementation of Shari'ah in the state, any Shari'ah courts of whatever grade can

fully try and convict any criminal case in as much as the accused is a muslim.

The applicable laws in both civil and criminal proceedings shall include:

1. The Glorious Qur'an
2. Sunnah and Hadith
3. Ijma (consensus of opinion of muslim jurists)
4. Qiyas (Analogical Deduction)
5. Masalih al-mursalah (public welfare)
6. Istihsan (public good)
7. Al-urf (custom)
8. Mazhab al-sahabi and other subsidiary sources.

The reference books to be used by the Shari'ah courts shall include the following texts and authorities:

1. Risalah
2. Mukhtasar
3. Tuhfah
4. Al-Adawi

5. Al-fawakil al- Dawani⁴³. And other maliki books.

3.4 Courts location and number of cases found.

As regards to the courts, there are five Shari’ah courts in Maiyama local government. There are four lower Shari’ah courts and one upper Shari’ah courts located at Maiyamatwon the headquarter of the local government four (4) out of these five (5) Shari’ah courts were visited. The number of cases obtained are based on the cases found in the record books of each Shari’ah courts.

The details of cases recorded are as shown in the table below.

Court location and number of cases from October 2003 to March 2015.

Court location	Court type	Number of civil cases	Number of criminal cases	No of civil appeal	No. of criminal appeal
Maiyama	Upper Shari’ah courts	892	105	101	98
Karaye	Lower Shari’ah courts	466	98	-	-
Andarai	Lower Shari’ah	965	137	-	-

	courts				
Mungadi	Lower Shari'ah courts	581	141	-	-

From the table above, it can be deduced that most of the cases treated in the Shari'ah courts were civil in nature in the realm of marriage, inheritance and land ownership. Similarly, the marriage cases were most famous cases found in the Shari'ah courts.

3.5 ANALYSIS OF SOME CASES FOUND IN SOME OF THE COURTS.

There are many cases found in the Shari'ah courts ranging from civil cases to criminal cases which the Shari'ah courts has jurisdiction over it which were in from marriage dissolution, landownership, guardianship ad maintenance, succession, tort defamation, theft, drunkenness, Adultery, cheating, mischief, homicide, robbery, homosexuality receiving stolen property among others which the Shari'ah courts has jurisdiction.

However, with this regards I wish to make or show some cases found in the courts and I wish to make an

analysis and criticism on the judgement of such cases and also find out how was the court makes the decision on such cases.

While attempting to make an analysis of some cases found in the courts I wish to bring to notice that marriage cases were the most famous that were found in the courts.

According to the statement of the register of upper Shari'ah courts Maiyama, he said that marriage cases were the most famous cases in the upper Shari'ah courts, he added that, about 80 to 95% of the cases in the court are matrimonial cases. This is base on his knowledge and the nature of his status in court as registrar of the court he added that before he registered 1 to 2 cases rather than the marriage cases in a week, he registered 5 to 6 cases relating to marriage.

However, some time the case was filled by the husband. Himself against his wife, while some times the case was filled by the wife herself against the husband. All either for a divorce directly or indirectly.

In addition, the wife can make an application before the court seeking for order of divorce against her husband. But there are certain ground for application for order of divorce as follows:

1. If the husband committed adultery with other woman rather than his wife and the wife seen she does want to continue live with him.
2. Persistent cruelty; from the hand of husband or within the matrimonial relationship may be the husbands relatives).
3. Desertion; if the husband will fully abandon his wife, the wife may issued and application seeking for divorce.
4. Assault and sexual offences.
5. Venereal diseases such as if the husband was infected with venereal diseases such as Aids e.t.c.
6. Habitual drunkenness or addiction to drugs.
7. Willful neglect to provide reasonable maintenance. If the husband willfully refuse to provide reasonable

maintenance to his wife, she has right to go to court for an order of divorce.

All these above are some certain grounds where the wife could seek before the court for order of divorce against her husband, if she could no longer afford to continue to live with him⁴⁴.

However, some marriage cases comprise of:

1. Application seeking for divorce: this is one of the marriage cases which are found in many courts, especially Shari'ah courts. This happens when the wife filed a complaint before the court seeking for divorce against her husband with a reason that, the husband could not provide her with reasonable maintenance such as, feeding, shelter or the husband abuses her or bet her without any reasonable ground as was seen in the case of Sabo MagajiVsHauwa'uAbdullahi And AbubakarSadikuVsHadizaAliyu⁴⁵. In all these cases the fact is divorce for either maintenance or the

husband willfully refused to provide the reasonable maintenance for the wife.

2. Nafakah:- This happened where by the wife were not in the house of her husband for a reason or the other (when the woman or wife live in her own family) for a long period of time and without divorce from the husband, which the wife can go to the court seeking for Nafaka that a money claiming for compensation of her feeding the out gone period⁴⁶. However, claiming of Nafakha some result to divorce between the husband and wife this is because sometime of after the husband pay for the Nafaka, he divorce the wife, while sometime the claiming for Nafaka is a means of seeking for divorce.

3. Reconciliation:- This is an application by the husband before the court for reconciliation of marriage between him and his wife. This happen when the wife move out to her family house with one reason or the other, and the husband try to gate her move back but she refuses to do so. The husband can

file a case before the court seeking for reconciliation⁴⁷.

4. There are also some cases relating to naming ceremony this occur when child was born and the husband refuse to perform naming ceremony for the child for the reason that the child is not a legitimate child of his.

The supporting case in this was the case of Maryam Umar KambaVs Ibrahim Kabiru⁴⁸. In this case, the complainant suit the defendant before the court (Lower Shari'ah Court Karaye) for the fact that she delivered a child 6 month and she claim that the child is a legitimate but the dependant argues and said that the child was delivered almost 4 months and 6 days after wedding ceremony.

The court after all make the decision in fevour of the defendant and get aside the case with the reason that of the wedding ceremony and the date of delivery of the child which both parties agreed upon was only 4 months and 6

days. And also he give his reason with the reference of the book of al-ihkamolAhkam page 118.

5. Persistent of cruelty: the wife may apply seeking for dissolution of marriage between her and her husband. If that husband or if there is any persistent of cruelty between them.

This is as like the case of Bello Na'abuVs Maryam Shehu.⁴⁹In this case, the defendant/complainant file a case, before the lower Shari'ah courtAndarai with the fact that her husband was beating her and he does not perform his religious duty and also that he was been suspected as a thief which he confess to do so as a result of that the Lower Shari'ah Court Andaraipassed the decision in her favour and the defendant appeal to the upper Shari'ah Court Maiyamabut he does not succeed because the court affirmed the judgment of the Lower Shari'ah Court and set aside the appeal.

The above are some of the analysis as to marriage cases found in the court. There are many but it is difficult to list all the cases.

However, other cases both civil and criminal are as follows:

These cases are either related to marriage divorce, adultery, inheritance, theft deformation, cheating, and destruction of properties among others.

1. The first one was the case of Hauwa'u 'YarShehu and Dan Bello Musa which was started from the Lower Shari'ah Court Mungadi as a no the appellant base on shelter as follows:

CASE: ONE

UPPER SHARIA COURT MAIYAMA

JUDGES: HON. MUHAMMAD USMAN

HON. HASSAN SHEHU

APPELLANT: HAUWA'U YAR SHEHU

RESPONDENT: DAN BELLO MUSA

CVA/24/2014 15/05/2014

This also is a case of divorce. An appeal against the decision of lower sharia court mungadi by the app/plaintiff seeking the dissolution of marriage for the following reasons;

- a. That the defendant did not provide shelter for the appellant, also that.
- b. He remarried another woman and provided her with Shelter other than the appellant.
- c. And also he left her without feeding

FACT

Hauwa'uYarShehu app/plaintiff has filed a case before the lower sharia court mungadi seeking for divorce against her husband accusing him of not providing her with basic marital needs as maintenance, shelter and feeling. She said her husband hasn't provided her with a room to shelter as a house wife claiming that her current room is a local one and is dilapidated. She produced witnesses before the court to support her claims but the court rejected them on grounds that they are not qualified to be

witness in the case. The court dismissed the case on grounds of lack of witness.

But on appeal, the upper sharia court enquire if the lower court had gave an order for the inspection of the room in question to which both parties agreed that such an order was not given. The upper sharia court sent its staffs to go and inspect the room and the results of the inspection were reported back to the court. Having used expert opinions of two knowledgeable scholars, the court ruled in favor of the appellant/plaintiff.

In its ruling Upper Shari'ah Court made the following statement.

This case started from Lower Sharia Court Mungadi with the case No. CV/5/2014, 21/1/2014 and ended on 15/5/2014 at this court, the Upper Shari'ah Court Maiyama after an appeal was made on 29/4/2014. In this case the appl/plaintiff Hauwa'u Yar Shehu sued her husband Dan Bello Musa praying for order of divorce. She accused him of not providing her with basic marital needs

such as maintenance, shelter and feeding. She added that she'd spent 4yrs with him, but in all this time he bought only one Atamfafor her as a means of clothing.

The Lower Shari'ah Court required her to present witness of which she succeeded in presenting six but the court rejected two. All the remaining four testified against her in favor of the resp/dep. The resp/dep also denies the allegation. The rejected witnesses I & II were rejected by the court on grounds that they are close relatives of the appl/plaintiff and so are not qualified to stand as witness as seen under of the book "Minhajul Al Muslim P. 424".

But the court, did not explain the status of the remaining witnesses, and at the end, the court provided that the plaintiff has no sufficient witness to support her case, giving reason base on the book of Ihkam al-ahkam p. 87 and for the absence of evidence or witnesses in the same book P. 12. Therefore the court dismissed the case, and gave an order of appeal within 30dys.

As regard to this, the appellant appeal to this court, the U.S.C. MaiyamaThe ruling of the L.S.C. during the adjudication, the court enquires if the lower court inspected the room, but both parties agreed that the L.C. has not done so.

With this, the U.S.C. sent one of its staffs to inspect the room which he did and reported back to the court.

The court also invited 2 experts with vast knowledge on the matter, MallamMaidama and LimanAbubakarMahi to give their opinion on the matter, which they did as follows:

LimanAbubakarMahi said that the room was not up to the standard as prescribed to him by the court and cannot be called room for a wife in a matrimonial home.

MalamMaidamma also has a similar view, saying that the man has no room for his wife.

Looking at the report of the inspection and the experts' opinion, the court concluded that, the

resp/dep has failed to provide the appl/plaintiff with one of the compulsory (wajib) aspect of marriage as required under Islamic law.

However lack of room is a deceit for a women so that it has the right to continued with marital life or not and the court ask her and she replied that she cannot go back to that house again that is why she is praying to the court for order of divorce.

Decision of the court (U.S.C.) Maiyama

From the facts above the court was convinced that the appl/plaintiff has a case and that the dep/resp has failed to as a matter of compulsory obligation provide the appl/plaintiff with a room for shelter. The court hereby rule in favor of the appl/plaintiff and dissolve the marriage and also that the wife has to observe 3 menstrual cycles as provided in book (but no reference).

That any party not satisfied with the decision of the court has the right to appeal within 30days. Dated 15/12/2014.

CASE: TWO

UPPER SHARIA COURT MAIYAMA

JUDGES: HARUNA IBRAHIM BASHAR

ALKALI BELLO JEGA

APPELLANT: ALHAJI ABARA KARAYE

RESPONDENT: HASANA ALHAJI ABARA KARAYE

CV/29/292003,30/5/2003.

This case is an appeal by the appellant to the Upper Sharia Court. The decision at the Lower Court Karaye for his reason that his wife sued him before the Lower Court Karaye and he did not do any appeal to her. And also said that they agreed that after this marriage celebration.

After 5yrs and she couldn't deliver he will divorced her and he denied so. Also his wife produced witness whom she said are all her parent. They do not know what happened between them. And the judge made the decision that, the wife shall give him N30,000 which he said. He

wasn't satisfied with the decision of the lower court and he appealed to the USC Maiyama seeking for the court to overturn the decision of the lower court and affirm their marriage between him and his wife.

However the fact of the case is, the case started from the lower Sharia Court Karaye when the plaintiff HASSANA ALHAJI ABARA sued her husband AlhajiAbaraKaraye before the court seeking for divorce as a result of the agreement which they enter into, that after their marriage celebration if she will not deliver after 5yrs he will divorce her, and that agreement took place in front of the public.

But she spent 15yrs with him without delivery that is why she wanted to be divorced, but the appellant/dep. Denied any agreement relating to divorce but he agreed that they only made the agreement that if there is need of her going out he will allow her.

But after this, witnesses such as Danmalam,Abubakar, his reprehensive i.eWalliy, tabuda,

Angonamairi were been called, and all satisfied that an agreement has taken place before the marriage celebration.

The court asked them to make "Sulhu" i.e reconcile themselves but she refuse do to any reconciliation with him, he seek to be paid N150,000 as a Khul'I before he divorce her. The court pleaded with him to accept N20,000 but he refused, then N30, 000 but also refused but said he could agree with N1000,000 but the wife pleaded that she does have that sum of money (100,000).

An expert committee was called upon to make an estimate of the dowry (sadaq) of the woman to which they agreed could range between N20,000 to N40,000 and can't exceed that.

Considering the next opinion the court made the decision that the wife may give him N30,000 as Khul'I and said that, agreement is null and void under Islamic law.

The judge gives reason that:

"And for women to her husband what full of her dowry or minimum or more than if there is no harm".

But the judge may not specify when he get this.

But on appeal the court ask the appl/dep. To accept N50,000 to which he agreed. The court ruled that since he agreed to the agreement he will have to divorce her

The upper shari'a court also held that as regard to the above, when the wife gives the money and the appellant accept the dissolution of marriage with reason at that money paid by the wife, the court held that the wife shall perform 3 menses before she remarriesand it gives order of appeal.

CASE: THREE

UPER SHARIA COURT MAIYAMA

JUDGES: HON. IBRAHIM ABUBAKAR

HON. ABUBAKAR LADAN ISAH

APPELLANT: BELLO NA'ABU

RESPONDENT: MARYAMA SHEHU

CVA/15/2011, 03/05/2011

In this case the appellant appealed to the upper shari'a court Maiyama against the decision of the lower court Andarai, that was he is not convinced with the decision of the lower court.

The appellant/dep. made the reason at his appeal that his wife sued him before the lower court accusing him of beating her and also failed to produce any witness to support her claim.

The second reason was, the court ruled that he should divorce the wife in only one trial sitting.

However, the fact of this case is that, the case was started from the Lower Shari'a Court Andarai with case No. CV/13/20ss11, 23/3/201 where by the plaintiff Maryam Shehu filled a case before the lower Shari'a Court Andarai against her husband seeking for divorce for the reason that he was not practicing his religion very well and also she did not know that he was a thief, he stole a cow which he has been arraigned by the Sambawa divisional police,

and also he confessed and paid for the cow. This was the reason why she wanted to dissolve the marriage.

The Lower Shari'a Court after hearing the statement of both parties and the evidences and witnesses presented before it, the court ruled in favor of the plaintiff and dissolved the marriage.

On appeal, the Upper Shari'a Court Maiyama based on the confession of the dep/appellant and under the provision of part 25 of the Sharia court law No. 2,2000, and part 59 Area court edict 1967 upheld the decision of the lower court.

CASE: FOUR

SHARI'AH COURT KARAYE

JUDGE: SHEHU ABUBAKAR BADA

PLAINTIFF: HAMIDU D/DAJI S/SARA

RESPONDENT: ADAMU D/MADUGU S/SARA

CASE NO: CR/38/KRY/2013, 18/10/2013.

CASE: DEFORMATION:

In this case, plaintiff Hamidu filed a case against Adamu before the Shari'ah Court Karaye for the reason

that because of some misunderstanding between both of them, he, Adamu accuses Hamidu's Mother of (Maita) witch craft. This is why he is dragging him before the court for his right.

Court Decision

The court after listening to both parties with evidences and witness presented before it. The court ruled infavour of the complainant and charged the respondent with an offence punishable under section 144 of the Sharia'h Penal Code the Court ordered that he should pay a fine of N3,000 or remained imprisoned for 6 weeks.

There is room for appeal by any party that is not satisfied with the judgement.

CASE: FIVE

SHARI'AH COURT ANDARAI

JUDGE: MUSA A. SULEIMAN

PLAINTIFF: SAIDU DAN ALI ANDARAI

RESPONDENT: USMAN KWARI – KWASA

CASE NO: CR/02/2013 – 6/02/2013

This is a case involving farm goods (Kara). The plaintiff Sa'idu filed a case before the Sharia'h Court against Usman accusing him of using his cows to destroy and eat up his goods (Kara) in the farm. And when he traced the cow's movement it did not stop anywhere but Usman's house. For this reason he is demanding his right before the court.

Court Judgement.

On deciding for the case, the court asked the plaintiff to provide any witness or evidence if he has which he could not, again the court asked him to take an oath which he also refused. The court based on the above claims dismissed his case on the ground that the case lacks bases and ruled in favour of the respondent.

The court gave its reasons based on what comes in the text (Nassi) that when the claimant failed to take an oath he has set the accused free. But the judge did not mention the book.

CASE: SIX

SHARI'AH COURT KARAYE

JUDGE: NAZIRU LIMAN JEGA PLAINTIFF:

ABDULKADIR MUHAMMAD KAMBA

RESPONDENT: AHMADU USMAN KMABA

CASE NO: CV/22/9/2014 – 24/10/2014

CASE INHERITANCE.

This is a case of inheritance of land. The plaintiff Abdulkadir filed case against Amadu the respondent before the Shari'ah Court challenging Amadu to give him his own share of farm and house which he inherited from his father.

Court Decision.

The court on its proceeding on the case requested the plaintiff to provide witnessed and evidence which he did and the respondent confessed and confirmed that the farm and the land truly belongs to Abdulkadir's father. Therefore the court was satisfied and ruled to transfer the ownership of the farm and House to Abdulkadir.

The reason of the court for its judgement was that the respondent has confessed and confirmed his guilty.

CASE: SEVEN

SHARI'AH COURT MAIYAMA

JUDGE: HARUNA IBRAHIM B/KEBBI

PLAINTIFF: C.O.P.

RESPONDENT: SAMA'ILA A. ALHASSAN MAIYAMA

CASE NO: CR/24/24 – 16/10/2012

CASE ZINA (ADULTRY)

The case involves Adultery. The police inspector AbubakarShu'aibu on behalf of the commissioner of police Kebbi state filed a case against Sama'ila A. Alhasan accusing him of having an affair with a house wife named HajaraAbdulkasim. A resident of Maiyama. That the accused was involved in a relationship with a married wife for a period of 3 month and on the 13/10/2012 at around 1:00 0'clock in the night called this to his room knowing fully she is a married woman and committed adultery with her. Thereforehe was charged with an offence contrary to section 128 and section 388 of the Shari'ah penal code.

Court Judgement

The court after its proceeding's in the matter – based on the evidence before the court that the accused is really guilty of the charge against him passed it judgement that the guilty Sama'ila A. AlhassanMaiyama Should be jailed for one year or Pay a fine of N10,000 with 100 lashes instated of stoning to death as section 128 of panel code as amended 2000 says. And for Hajara the court ruled that she should pay a fine of N5000 or one year imprisonment for the fact of her sanity as a woman.

CASE: EIGHT

SHARI'AH KARAYE

JUDGE: HARUNA IBRAHIM B/KEBBI

PLAINTIFF: MALAM IBRAHIM KAWARA

RESPONDENT: SAIDU DOGO KAWARA

CASE NO: CR/36/2013

CHEATING UNDER SECTION 93 OF PENAL CODE.

The plaintiff Ibrahim file a case before the Shari'ah Courts against Sa'iduChallenging. For breach of court order for the fact that he Ibrahim has once sue

Sa'idu before the court seeking him not to do (Sheka) spreading ashes of grains in his House. The court ordered him to stop but now for the 2nd time he has repeated the something. For this reason I want the court to interfere.

Court Decision

The court after listening to the, matter before it, which the accused confess of guilty. The court charged him for the violation of section 29, 2000 of Penal Code and sub section 93(c). The court make it decision under section 93 and charged Saidu to pay a fine of 2000 or 4 weeks imprisonment.

CASE NINE

SHARI'AH COURT MUNGADI

JUDGE: MUHAMAMD BASAHAR

PLAINTIFF: HANNATU ISAKU

RESOPONDENT: ABDULRAHMAN MUSA MUNGADI

CASE NO: CV/119/2014 – 24/11/2014

Case Divorce

This is a case of divorce. The plaintiff Mrs. Hannatu filed a case before the Shari'ah Court Mungadi seeking the court to dissolve their marriage with her husband. The reason is for complete 2 years of their marriage, the husband has never bought her any piece of cloth and when she is sick he does not buy her drugs in addition, he owes her some amount of money which he has refused to pay her. This is why she cannot continue with the marriage therefore, she is seeking for divorce before the court.

Court decision

The court after listening to the matter summoned the respondent where he pleaded guilty of his charges including evidences. The court moved to dissolve the marriage between Hannatu Isaku and Muhammad Basher with the reason that the husband has failed to carry out his duties and responsibilities as stated by the Shari'ah.

CASE: TEN

SHARI'AH COURT MUNGADI

JUDGE: IBRAHIM HARUNA

PLAINTIFF: HABIBA SANI SARAN DOSA

RESPONDENT: RUKAYYA MUSA KURUNKUDU

CASE NO: CR/21/2012 – 14/4/2012

This is a case of fighting the plaintiff habibaSani file a case against her co-wife Rukayya for the reason that when she Rukayya cooked food she will not give it to Habiba's children which resulted in a fight between both of them and in the cause of fighting Rukayya bite Habiba on her chic. This is why she sue her before the court.

Court Judgement

After reading the charges for the accused which she was found guilty with evidence proved before the court, the court charged her with a fine of N3,000. Or six month imprisonment.

CASE: ELEVEN

SHARI'AH COURT MAIYAMA

JUDGE: HARUNA IBRAHIM BADA

PLAINTIFF: ARZIKA MAI SHAGO MAI KWARI

RESPONDENT: RUWAN BARKI WURO GAURI

CASE NO: CV/88/2005 – 14/7/2005

This is a case for demanding of right the plaintiff is seeking the court to compel the respondent to pay him his right for the fact that he Ruwanbarki has put his cows in Arzika's farm and destroyed his planted rice in the farm.

Court Decision

The court after hearing the matter with the parties agreed to make (Sulh) reconciliation between them selves of N80,000. The court ordered the respondent to pay the stated amount above to AzikamaiShago as Sulh(reconciliation).There is room for appeal within 30 days.

CASE: TWELVE

SHARI'AH COURT KARAYE

JUDGE: MUHAMMAD NASIRU ALH. KALGO

PLAINTIFF: FADIMATU ISA KARAYE

RESPONDENT: USMAN LABBO KARAYE

CASE NO: CV/32/2010 – 27/4/2010

Case: confirmation of divorce

The plaintiff Mrs. Fadimatu file a case before the Shari'ah court for the court to confirm the divorce by her husband on her that earlier on her husband had made mention that he divorce her twice. So she want the court to confirm this divorce.

Court Decision

In its judgement the court on the statement of MalamUsmanlabbo that yes he has divorce his wife fadimatu two times. The court has confirm this divorce. The reason for the court is according to the statement of the author of Risala that divorce lyres on the husband. Therefore, the court order her to spend her iddah 3 menstruation period with effect from today.

CASE: THIRTEEN

SHARI'AH COURT ANDARAI

JUDGE: HARUNA IBRAHIM

PLAINTIFF: ZAINAB ABU

RESPONENT: ABDULKADIR ABDULLAHI

CASE NO: CV/19/2012 – 23/2/2012

This is a case of divorce. In this case, MalamaZainab file a case challenging her husband before the Shari'ah court seeking for the dissolution of her marriage with MalamAbdulkadir for the reason of cruelty, beating and insult claiming that if she is a bastered then he will injury her for this reason she can not continue with the marriage.

Court Decision

Considering the above mentioned claims by the wife Zainab against her husband and with the witnesses of MalamBardeRuwanhili which the husband accepted, therefore the court was satisfied and convinced ruled to dissolve the marriage between Zainab and Abdulkadir with effect from today 16/5/2012.

However, the court did not state its reasons for the judgement. There is room for appeal by any party that is not satisfied within 30 days.

CASE: FOURTEEN

SHARI'AH COURT ANDARAI

JUDGE : HARUNA IBRAHIM

PLAINTIFF: SHAMSIYYA BELLO KURUNKUDU

RESPONDENT: MANU AUDU KURUNKUDU

CSE NO: CV/06/2015

This is also a case of divorce MalamaShamsiyya Sued her husband before the court praying for the court to dissolve their marriage for the reason that her husband does not use to buy her washing materials and other basic needs for her as a house wife and he used to engage in drugs Abuse. This is why she wants to end the marriage.

Court Judgment.

The court in its proceedings for the case found the husband guilty of his charges which he confessed. Therefore, the court ruled in favour of the plaintiff and

dissolved the marriage for the reasons of being engaged in drug abuse and unable to carry out his responsibilities as a husband to his wife.

CASE: FIFTEEN

SHARI'AH COURT ANDARAI

JUDGE: SHEHU ABUBAKAR BADA

PLAINTIFF: HALIRA SAIDU R/FILI

RESPONDENT: MANU D/TUMBA

CASE NO: CR/93/2014 – 28/11/2014

This is a case for the beating of a house wife. The plaintiff, Halirais challenging Manu D/Tumba, before the Shari'ah court accusing him of beating a house wife. That one fateful day. Manu came back from the farm enter the room of this woman and started beating her, so she want to know why he meat her in her room and beat her.

Court Decision

The court after listened to the matter which the accused was found guilty of the offence leveled against him, charged him to pay a fine of N5,000 or one year

imprisonment at the same time he should pay the money spent for her treatment.

CASE: SIXTEEN

SHARIAH COURT ANDARAI

JUDGE: HARUNA IBRAHIM

PLAINTIFF: C.O.P AMINU ABUBAKAR

RESPONDENT: ABDUL-AZIZ HARUNA

CASE NO: CR/90/2014 – 21/01/2014

CASE THEFT:

The police officer with No: 225893 S.G.T AminuAbubakar on behalf of police commissioner Kebbi State, sue AbdulaziizHarunaJega for stealing, an offence under section 287 Shari'ah panel code. That on the 21/10/2014 at exactly 4:00pm he was caught with a goat worth N12,000. The owner was unknown but the accused claimed stealing it from Jega to Maiyama.

Court Decision

The court in its proceeding for the case, found the accused guilty for the crime leveled against him. The court here by charge him with an offence punishable under the law. And sentenced him to 6 month imprisonment with a fine of N3,000. The court ordered that the goat should be sold if the owner can't be found and money should be kept in where lost items are kept.

CASE:SEVENTEEN

SHARI'AH COURT KARAYE

JUDGE: NAZIRU LIMAN JEGA

PLAINTIFF: MARYAMU ADAMU

RESPONDENT: ALH. NURA D/DAJI

CASE NO: CV/12/2014 – 3/10/2014

Case Divorce

In this case, MalamaMaryamu sued her husband AlhNura before the Shari'ah Court demanding the court to dissolve their marriage for the reason that her husband does not teach her Islamic knowledge and he does not buy her cloths including soap for washing. She used to buy for herself for this reason she wants to end the marriage.

Court Decision

In its judgement the court ordered the wife to pay the husband the dowry in which the wife agreed to pay and the court move to dissolve the marriage.

The court gave its reasons as what comes in the (Nassi) text that "a woman can ransom her self if what she is claiming of her husband is found to be in substantial or true.

END NOTES FOR CHAPTER THREE

¹Qur'an.

²Qur'an 15:99.

³A.I Doi Shari'ah the Islamic Law Centre for Islamic Legal Studies, Ahmadu Bello University, Zaria, Nigeria Rabi'al-Awwal, 1404 A.H. pp.5-8.

⁴Qur'an 45:18.

⁵Ibid.

⁶Abdulmalik Bappa Mahamud History of Shari'ah in The Defunct Northern Nigeria Gaskiya Publishers N.P.

⁷A.I. Doi Shari'ah the Islamic Law Opvit, p.8.

⁸Ibid p.10.

⁹Qur'an 4:135.

¹⁰Sahih Al-Bukhari, Vol 8, Hadith No 108.

¹¹S.Khuda Bukhship, np,nd. The orient under caliphs p.347.

¹²A. Abdul Wahid, 2007, Sharikatulqudsu Li al-tijarah, umad al-ahkam N.P p.81

¹³Abdulrahman I. Doi.

¹⁴S.O. Rabi'u Lecture Note on Islamic law of evidence.

¹⁵Shad Hammid 9 August 2003. Renaissance monthly

Islamic journal Islamic Education trust 1430/2009. P.628.

¹⁶Civil and Criminal record books of Shari'ah Courts in
Maiyama.

¹⁷Aliyu Muhammad Danzaki; (2003) L.L.b Project Analysis
of Adjudication of marriage cases in Upper Shari'ah Court
Yabo pp. 21-53.

¹⁸Muhammad Nasiru (2013) L.L.B project. The office of a
judge from Islamic point of View, a look at contemporary
Shari'ah courts pp. 42-61.

¹⁹Shari'ah Implementation Committee's report (2003)
Kebbi State.

²⁰Obilade

¹B.A Muhammad, et-al, 1981 Madaras Continental Book
Centre, Islamic Religious Knowledge p.253.

² Dr. M.M. Khan, Sahih Al-Bukhari, Sahih Al-Bukhari
Kitab Al-Hudud Vol 8, Dar Al-Arabia Publishers, Beirut –
Lebanon P, 428.

³ Al-Bukhari Hadith No 108 Vol. 9. Dar Al-Arabia
Publishers, Beirut – Lebanon.

⁴ Sahih Al-Bukhari, Hadith No 779. Dar Al-Arabia

Publishers, Beirut – Lebanon.

⁵A.M. Mahmud, 2007, Dar al-Kutub Lebanon Approach of the Muslim p.447.

⁶ Ibid.

⁷ Ibid.

⁸ A.I. Doi Opcit pp240 – 241 (This is a Weak Narration Hadith).

³¹B.A Muhammad, et-al, 1981 Madaras Continental Book Centre, Islamic Religious Knowledge p.253.

³²Al-Bukhari, Sahih al-bukharikitab al-Hudud

³³Al-Bukhari.

³⁴Abu Dawud.

³⁵A.M. Mahmud, 2007, Dar al-Kutub Lebanon Approach of the Muslim p.447.

³⁶Op.cit: AbdulmalikBappaMuhammad.

³⁷Shari'ah Implementation committee's report kebbi state. October 2003.

³⁸Local Economic empowerment development Strategy (LEEDC) Maiyama Local Government kebbi state. Over view of LGA NP./2006 census.

³⁹Op.cit Note 10 and Area court Edict No. 419 6.8 (B.PS – 311)

⁴⁰S4 of the Shari'ah court Procedure code 2000 Kebbi State.

⁴¹S.S Area court Edict No. 4 1968 (B.P.S)

⁴²S.6 of S.C.C.P.C Kebbi State 2000

⁴³Ibid A7

⁴⁴Bramley family law 5thed; and the book of Risala.

⁴⁵AltineShheuVs Rabi Ibrahim Unreported No CV/24/2011, 24/05/2011.

⁴⁶Muhammad DanyanVsAsabe Hassan Unreported Bo, CVA/44/2011, 14/10/2011.

⁴⁷Maryam Umar kambaVs Ibrahim kabiru unreported Suit No CV/68/2011, 20/12/2011.

⁴⁸Bello Na'abuVs Maryam Shehu Unreported CVA/15/2011, 3/5/2011

-
- * Civil Appeal Record Vol. 1 2003 and Vol 1, 2 and 3 2011 Shari'ah court Maiyama.
 - * Civil Case Record Book Vol II and III 2010, 2013 and 2014 and criminal Record Book Vol III 2014 Shari'ah Court Karaye.
 - * Civil and Criminal Case Record books Vol I and II of 2003, 2005 and 2013 and 2014 Shari'ah Court Andarai.
 - * Criminal and Civil cases Record books Vol II, III and IV of 2013, 2014 and 2015 of Shari'ah Court Mungadi.

CHAPTER FOUR:

MODE OF JUDGEMENT OF SOME CASES FOUND IN THE COURTS.

4.0 INTRODUCTION

This chapter comprises how the complainant instituted the claim and mode of judgment of cases in the courts. The chapter also looks at how the court hears a case filed before it and also how the court makes decision on the case.

The shari'ah courts have the jurisdiction of any offence filed before it provided that such offence is one of

the offences listed in (appendix a) of the shari'ah civil procedure code⁴⁸. Unless there is any provision that disallow the court to do so under this Law. This is by virtue of section 12 (I) provided.

"except with the provision of this section only the shari'ah courts has the jurisdiction overall the offences listed in appendix (a) of this code⁴⁸.

However, mode of judgment is the way that shows how a shari'ah court hears a matter field before it and makes decision. This occurs from the date of filling the case in court, producing evidences to support or to denied the allegation against the person who had been sued before the court.

It also contains the way of issuance of a summon or a warrant of arrest to compel the attendance of the party and also the witness before the court⁴⁸.

However, its' also to ensures that how the court tries the whole case before it, which comprised the right of the court to call an expert or any given person who is

knowledgeable in a given case to ask him about the matter in transaction⁴⁸.

Finally, also it includes how the court after hearing the matter from the parties in proceeding as well as the view of the witness shall gives decision after adjoining the cases and how the court gives its reason on that matter.

4.1 Mode of Instituting The Claim

Now that a court/a judge has been appointed and the court has been established, it is open for any person in the locality to go in to that court and submit his or her claims.

"at any place the court has decided to in order to adjudicate any case, the place must be open to the public, unless such a place is not convenient to them"⁴⁸.

However, the claim is submitted either verbally i.e where the claimant goes to the judge and explain his claim. If the judge seen that the isprima facia case then he

order the registrar for registration of that claim in the register book. He then fix a date for hearing and send a summons to the person to whom claim is made.

It also may be in writing on a special stamped paper known as petition and if that petition is allowed, it would, be given a consecutive number registering it and putting it in a separate file⁴⁸.

In upper shari'ah court being as appellant court, some cases started from the lower court and appealed by the appellant, before it. In this regard the appellant in upper shari'ah court against the decision or order of the lower court shall give the copy of his appeal to the registrar within 30 days, and he or she must set out the reason of appeal by himself or through his or representative and must be with signature⁴⁸.

But before any claim can be accepted, it must be submitted to the judge in court and not outside the court, and also it must be clear, definite and without any

ambiguity or doubt, and also the address of both parties must be shown. The claim also must be reasonable and binding by the Islamic law.⁴⁸

Process to compel the attendance of an accused person. There are only two ways of compelling the attendance of an accused before the court and that is by way of summons or by way of warrant of arrest.

By way of summons; a court may send a summon to some one to appear following a complaint laid down before the court, the summons must state in writing, the structure of complain, name of the accused, the date issued and must be stamp or signed by the judge⁴⁸

On the other hand, a warrant of arrest on the authority in writing by the court to a police officer or any other person to arrest an offender. A warrant of arrest is applied for where the allegation against the person is a serious one which may be issued following the complain laid down before the court. There must be the date of issue

and other necessary particular and also signed by the judge.⁴⁸

A warrant of arrest also remains enforced until it is executed or cancelled by the judge. However, it is the discretion of the court to decide whether to issue summons to appear or a warrant of arrest⁴⁸.

Service of summons shall be personally on the person summoned but if it is a company or partnership one of the partners will do or director of the company or any principal officer will do, or leave a copy in their place of business⁴⁸.

Furthermore, if the court wants to issue the summons in another jurisdiction outside the issuing court's jurisdiction, the summons shall be seen in writing to a court whose jurisdiction the person is resident. That court there after directs services as if it had issued the summons⁴⁸.

In addition, the person who served the summon and one to whom the summons is served or a person whose

summons leave to him or a witness whom in his presence the summons was served takes an affidavit before the court that was served and signed⁴⁸.

4.2 MODE OF JUDGEMENT OF CASES

After we considered the mode of instituting the claim and the process to compel the attendance of the person, we now look at mode of judgment of cases in the court, which comprises issue of producing witnesses, trial of the case, defense of the accused person, examination of the witness and the examination of the accused by the judge.

When the court has received the claim and has seen the reasonable ground for proceeding, the court may issue a summons to compel the attendance of the accused person to be present before the court. This is provided as follows:

"When the courts receive any complain an seen that a reasonable ground for proceeding the discretionary power of the court to issue the summons or warrant may apply to compel the attendance of the accused person before it, provided that the accused was not in prison or

on Jail and the court may proceed to try the case if it has jurisdiction of that offence"⁴⁸.

However, during the trial of the case, both parties must be present in court after due notice of both the time and place of hearing, failure to do so by the complainant may result in the case being struck out unless there is reasonable excuse, and also the absence of the complainant may lead to the discharge of the needed person.

On the other hand, the accused must be present in court during the hearing of the case or throughout the case proceedings, but if he however misconduct himself, the court may dispense with this provision⁴⁸. However as it was already explained, the accused person may be compelled to his attendance to court by way of summon or warrant as for the discretion of the court, but if the court issued summon to the accused person, the court if it so wish may dispense the accused person from attending to court by himself, if the court saw a reasonable ground to do so. But this only happens if three circumstances arise as follows:-

-
- a. If the accused person was represented by a lawyer or.
 - b. He gives notice in writing to his representative or his relative that he represents him or.
 - c. He pleaded guilty in writing and also with his signature.⁴⁸

Although, the moment the parties were present in court, that is when the accused person has been or was compelled to court, the court may order to read the offence which he be charged upon and also the court may ask him whether he has any defense or evidence of not being guilty of the offence charged.⁴⁸

But if confessed that he pleaded guilty of what he had been charged, the court may write down all his words during the confession. But, before the court makes decision against the person who confesses, the person, also the court must be sure or satisfied that he knows the consequences of his confession. And also must tell him that he has the option of dismissing his confession⁴⁸.

And if the accused has failed to provided reasonable evidence that he/she is not guilty of the charged offences, the court may give its decision as soon as possible⁴⁸.

Furthermore after the court decides that it cannot give it decision against the person being charged, or even if he has evidence to that he is not guilty when he denied the allegation. In this regard the court may continue hearing the person who made the allegation. After that the court may order to give a witness from the complainant or anyone else who bear witness to what happened. And the witness may becompel to attend before the court through the issuance of summons to give evidence of what he/she knows about the matter⁴⁸.

At this juncture the accused person has right to examine the witness of the complainant and also the complainant has right to re-examine the witness⁴⁸.

From the forgoing if the court sees that the accused person is found not guilty, he/she shall be discharged,

unless after that the court may find something rather than that, and the court may also discharge the person upon any case before it, if it sees that there is no ground or the case is unreasonable but the court must write its reasons for doing so.⁴⁸

However, after taking evidences and examination of the witnesses when the court has seen that there are prima facie that a person committed the offence which it has jurisdiction, and also the court decision is exactly what it has jurisdiction to do so, the court may prepare a charge and after giving notice to the accused person of his offence, and the court must show the name of the offence and provision of the law created for such offence, then the court may proceed to trial the offence⁴⁸.

TRIAL OF THE CASES

When the preparation of charge will be taken by the court. The court during the trial of the case may read and explain the charge to the person being charged.

The court also may proceed to ask him whether he accepts or deny the allegation and also whether he has any defense. So in this regard if the person has pleaded guilty the court may write it down and may. If it so wish give judgment against him. But before any judgment against him upon his confession, the court must satisfy that the person has understood the nature of what he/she has being charged, and the consequences of what confession caused him⁴⁸.

DEFENCES

This is the situation where by an accused person may plead not guilty to the offence or may even stand mute, he will be asked to re-examine the witnesses of the complainant, which the evidences is already being accepted. He may be recalled for re-examination and cross examination by the complainant if he so wish, and after that the court dismissed them.

When this happened the person charged may be called to give his defense and producing his evidence supporting his defense, and also if the person has given or shown a document the court may attached them with that statement made by him. And also if he produced witnesses he has the right to examine them and the cross examine from the complainant side.⁴⁸

Although during his statement of defense if the person give the name of his witnesses the court may ask him to give the full address of each witness which he wants to be called for his defense. And also after that the person may ask court to issue the summon or warrant to compel the attendance of a witness or to provide something to support his defense, but if the court has seen reasonable ground in making the trial, or the trial not performed very well with justice⁴⁸.

Also if the court during proceeding saw that the person is not guilty, the court may write the order that the person has been discharged but if the court saw that he

his guilty, the court may explain what it found, and if he did not call a witness to support his defense he will be charged.⁴⁸

From the forgoing, the court may give its reasons of what it has seen that is based on the statement of the witness or any other things which it may use as a witness in the case, and make the decision of what it has seen on the matter and the case is all over, and also the judge may put his stamp or signature at the end.⁴⁸

4.3 DECISION OF THE COURT AS REGARDS TO THE CASES

Judgment is the final decision of the court resolving, the dispute and determining the right and obligation of the parties. After the final address, the court must not give delivery of judgment until a fixed date. It is in the tradition of the court for judgment to be reserved to enable the court deliver a, reasonable judgment since there is no specific

format prescribed. But it must contain the essentials that are as follows⁴⁸.

- a. Fact of the case and its number i.e case number.
- b. Name, religion, tribe or address and the age of the person charged.
- c. Name, Religion, tribe and address of the complainant.
- d. Date of filling the case before the court
- e. Issues involved
- f. The names of witnesses for both side
- g. Statement of the person charged and the investigation which may be done.
- h. Laws applicable for the offense.
- i. Point for determination and decision there on.
- j. Reasons for the decision.
- k. Drawing the date for conclusion of the case.
- l. Date and signed or stamp by the judge at the time of pronouncement.

The law provided that:

Shari'ah courts has the jurisdiction to decide upon any decision provided by law to do so⁴⁸.

Finally, the judgement may only be either in favour of the plaintiff or against the respondent or in favour of respondent against the plaintiff. It may either be affirming the decision of lower courts or to set aside the case.

In short, the judgement occurs only by the discretion of the court of what it has seen in the transaction.

END NOTES FOR CHAPTER FOUR