International Journal of Law
www.lawjournals.org
ISSN: 2455-2194
Received: 20-03-2023, Accepted: 05-04-2023, Published: 20-04-2023
Volume 9, Issue 2, 2023, Page No. 117-122

Islamic law and application: The severest intrusion to citizens' rights in Nigeria

Eleonu James*
LL. B (Hons), BL (Hons), LL.M, Notary Public, Doctoral Scholar, Imo State University, Owerri, Nigeria

Abstract
The purpose of this paper is to define the proper place of Islamic Jurisprudence and its application in Nigerian Legal environment. It must be noted herein that Islam has influence in legal matters in the Northern parts of Nigeria only. It is virtually unknown in the legal life: of the South. It is rather surprising that Moslems in the other regions do not consider themselves bound by the provisions of Islamic Jurisprudence in their general secular lives, whereas their Northern brothers and sisters have accepted the application of Islamic law without much questioning in family and property matters even when such law is at variance with their customary practices. This raises a very interesting and serious issue of finding the reason for these differences in approach to Islamic law. The most tempting reason(s) for this contrasting attitude may be deemed to lie in the relative strength of Moslem populations in the two zones; that is North and South [1]. However, the problem goes much deeper than that. A closer examination will show that the matter cannot be explained only in the terms of the relative religious beliefs of the members of the various peoples of the different regions. There must also be taken into account the religious belief of the political leader of each local community, wherever such a leader exists [2]. Where the leading political authority was a strong adherent of Islam, he found it necessary to enforce the rules of Islam in the secular affairs not only of himself but also of his subjects. This work adopted doctrinal approach /or method and recommended that Islamic law should be applicable in Nigeria only and if the parties have selected Islamic law to bind them in a particular transaction or when the matter in question in is known to no other law but Islamic law.

Keywords: Islamic law, customary law, land law, inheritance, application

Introduction

Developments in Judicial Attitude

After a long period of this systematic application of the Islamic rules by the courts created or encouraged by the political authority, persons subject to the jurisdiction of such courts tend to look on the rules as being unquestionable probably because until recently the political rulers were all-powerful and their authority was limitless. By the time the natural rulers' powers had dwindled, the Islamic law had become part and parcel of the lives of the subjects and the super-imposition of this law, which had been originated by a different race - the Arabs - who are quite different in social, economic and political aspirations, had become acceptable to most " Northern Nigerians."

According to Trimingham, Islam was introduced into the Northern part of "Northern Nigeria" during the fourteenth-century A.D. but initially it did not become more than the religion of the ruling and trading classes, while the bulk of the peasantry remained pagan [3]. There is no doubt whatsoever that the Islamic jurisprudence has been forced on their subjects by the Moslem rulers in the North. This conclusion is unchallengable because in the Southern half of "Northern Nigeria," the political leaders, if such can be said to have existed in earlier history, were not strong adherents of Islam. Islamic law is never presumed to be the applicable law unless it is established that it was the law selected by the parties or that the relationship existing between the parties was not known to any other law. A comparison of the attitudes of the native courts in Ilorin on the one hand and the Offa native court on the other hand leads one to no other legitimate conclusion. For instance, in Ilorin, where the members of the ruling house had been renowned Moslems from time immemorial, the Alkalis' and Emirs' courts have rigidly applied the Maliki Code [4], even though it is common knowledge that the Yoruba people always look on their *tribal* laws as their *personal* laws irrespective of their religious beliefs. But in Offa, which is another Yoruba town about 30 miles away, where the rulers had never been Moslems the court has been applying the customary law in all matters even if they concern Moslems, since the Moslems in that area who do not consider Islamic law as their law and they organize their lives according to the usages of custom. Nothing would be more astonishing to an Offa man or woman than to be told that by professing the Moslem faith he or she had opted to be bound by Islamic law even in only certain areas of his or her secular life. Even in the far North (upper half of "Northern Nigeria") the various peoples have evolved many customary practices which differ from Islamic law and which are invariably more in accord with their way of life than the engrafted Islamic law. But when such practices come to the Moslem courts, they are struck down. This has resulted in the people practicing one thing while the courts uphold another-Islamic law may appropriately be termed "the law of the Moslem courts [5].

The greatest consolation is the fact that by far the greater percentage of legal matters do not ever get to the courts but are settled privately in arbitral proceedings under rules of native law and custom, which were established for the people by the people themselves. The reason for this questionable attitude of the Moslem courts lies in the fabric of history and is not unconnected with the Holy War – the jihad – which began in 1804. The wars were prosecuted in order to extend and purify the Moslem territory [6]. Even conceding that this was a sufficient justification for enforcing some rules of Islamic law, the area of application

ought to be very narrow. Indeed; it should be limited to situations where the issue is really concerned with spiritual life. Otherwise its operation ought to depend on the parties choosing Islamic law to bind themselves in the legal transaction or on the cause of action being known to no other law but the Islamic law. Even though this problem has not yet arisen in the other "regions" of Nigeria, there is no doubt that Islamic law will be applied there if the general principle of choice of law points to that law.

It can never be over-emphasized that even in the case of "Northern Nigeria," Islamic law has not had as much influence as outsiders assume it to have. It is conceded that some courts have mechanically applied the Maliki Code, which is the version of Islamic law found in "Northern Nigeria," when some other law such as the customary law, has a better claim to being the applicable law. This is a natural human tendency. The judges in such courts are Alkalis, who are familiar with no other law but the Maliki Code and as a result of their training tend to feel that every native practice is "paganic" and as such deserves to be struck down. The same tendency has been shown until recently by courts constituted by judges trained in English law, whether the judges were Nigerians or foreigners. A very good example of this is the decision of Jibowu Ag. S.P.J. (as he then was) in the celebrated case of *Dawodu* v. *Danmole* [7] where Mr. Justice Jibowu, a Yoruba man, felt that the rule of Yoruba succession known as idi igi under which the children of each wife combined have an equal share with the children of every other wife combined irrespective of the number of children each wife has was repugnant to natural justice, equity and good conscience. The present writer with respect, does not intend to be unkind to the Moslem courts but seeks only to suggest that they might reconsider their attitude to the customary laws of the various peoples of" Northern Nigeria.

The Misconceptions

At this juncture, it is incumbent to explore the misconception about the tenurial system in "Northern Nigeria." The traditional land system has not been transformed by the concepts of Islamic law [8]. The emphasis on individualization in land land-holding is a general tendency of social and economic advancement of the various peoples of “Northern Nigeria”

This individualistic tendency is not limited to "Northern Nigeria" but extends also to "Western Nigeria" which has some appreciable number of Moslems and also to "Eastern Nigeria" whose Moslem population is negligible. In fact, it has not been limited to Nigeria. The present writer has found in his research on the tenure of land in "Northern Nigeria" three stages of development in land organization, which have depended on the stage of social and economic advancement of each society. The stages are normally interwoven and it is a matter of which stage is predominant at a particular time which determines in what category we shall place any society and any point of time. The first stage is where the economy is at its lowest ebb and the land is more than sufficient to meet the needs of every member of the society.

At this stage land is of no economic value and the people can afford the wakeful practice of shifting cultivation, which involves abandoning the cultivated land each time the fruits are collected. The whole area is looked upon as belonging to the entire community and each individual or family exercises only a right to occupy the farmed portions. The position of the political head at this stage, if there is such an institution, is powerful. He would appear to be the owner of the community land but in reality he is merely "a trustee" of the whole area for his entire people. At the next stage, because of advancement in the economy of the people and/or an increase in population, the land of the community becomes insufficient to satisfy the needs of every member and at this stage the unit for land-holding is the family and each family claims the ownership of whatever areas the members, at one time or another, have cleared. This' is the stage of most rural societies in Nigeria today. The third and final stage is when the economy is fully developed and/or the land available is so scarce that each individual's needs cannot be fully satisfied. At this stage, each individual holds fast to whatever piece of land on which he has first expended his labour or which he has acquired as a purchaser or a successor. This stage is found in both urban and rural areas, For instance, Kwoi (in Southern Zaria) where the people suffer from an acute shortage of good agricultural land. It need hardly be pointed out that this is not a new theory. Various writers have associated the tenurial systems of many societies with their economies but what is new is that the present writer draws the theory to its logical conclusion as shown by his research and findings in the field. As early as 1951, Dr. Meek saw the light and in "A Note on Primitive System on Land-holding and on Methods of Investigation," in the *Journal of African Administration,* said: "The study of court cases relating to land is an essential part of any enquiry into tenure. Much of the evidence may be contradictory. This is to be expected where land customary law is being *rapidly transformed by new economic conditions* [9]. This view was echoed that same year by an African legal expert, Professor T. O. Elias, in the following words:

> "Fifthly, wherever individuals now hold lands in their own right, as for example, they do in Lagos, Abeokuta, Ibadan, Onitsha and Calabar this is usually due to the importation of English ideas of land law wholly foreign to indigenous tenurial systems. This explanation of the phenomenon of individual ownership, like that of its congener-alienability of land is only true in a broad sense, for even at the time of the British occupation of the country, the *pressure of population* upon land was already *forcing the process of social change so that dealings in land in a crude economic sense had begun in certain crowded areas.* ” [10]

But even though Islam has not transformed the basic tenurial systems in "Northern Nigeria," it has succeeded in some areas in modifying the customary laws. Land has a particular significance for the traditional African societies in that the peasants (and invariably every man was a peasant) can employ it for agricultural purposes, which 'occupation is normally monopolized by the male members of the society. But in many areas of "Northern Nigeria" the Islamic law of inheritance has given the women a share in landed property, which share they were not entitled to under the customary laws. Secondly, the Moslem and Emirs' courts in many areas have consistently applied the Maliki Code in all transactions relating to land even when it differs from the practice of the people, which practice would have constituted customary law elsewhere in Nigeria. For instance, in the case of *Liman Usman Madagali* v. *Risku*

District Head Madagali Yaguda, Ardo Disa [11] it was held that where there is a conflict between Islamic law and customary practice, Islamic law is to prevail. The decision reached in this case appears valid in terms of doing justice in the context. The alleged customary practice was expropriatory and unjustifiable in any civilized society. The facts were that Mallam Liman Usman made a complaint against Lamido Madagali that the latter had given Mallam Liman's farm, as a gift, to Ardo Disa and Mallam Iguda, after Mallam Liman had gone abroad. He was away for barely two years. The Sharia Court of Appeal reversed the decision of the Provincial Court which was that the District Head had the right to give to another person the land of any person who travelled. The Provincial Court's decision was said to have been based on custom and tradition but the Sharia Court of Appeal allowed the appeal, *inter alia*, on grounds of Islamic law. The decision appears sound but it is doubtful if there is any logic in asserting that whenever any customary practice differs from Islamic law the latter is to prevail. It would not have mattered at all if this wide remark had been made by a lower court. The remark has misled many lower courts to refuse to apply the customary laws of the various peoples of "Northern Nigeria" even when such customary laws equally, if not better, satisfy the ends of justice, which is the primary concern of all courts.

That the Sharia Court of Appeal is determined to replace customary laws by Islamic law is evidenced by its consistency in striking down the customary practice whenever it differs from Islamic law. This was the situation in an earlier case, *Alhaji Ishaku* v. *Hadejia Native* Authority [12] where the facts at issue were exactly the same as those in the *Liman* case [13]. This practice of the Sharia Court of Appeal raises the issue of whether it is the public policy to apply Islamic law in all land matters in "Northern Nigeria." There is no doubt that it was not the intention of the legislature of "Northern Nigeria" to enforce Islamic law as the *lex situs* in the region. This view is supported by the wordings of section 24 of the Native Courts Law [14] read in conjunction with section 23:

"24 (1) In mixed civil causes, other than land causes, the native law and custom to be applied by a native court shall be -

a. the particular native law and custom which the parties agreed or intended, or may be presumed to have agreed or intended, should regulate their obligations in connection with the transactions which are in controversy before the court; or
b. that combination of any two or more native laws and customs which the parties agreed or intended, or may be presumed to have agreed or intended, should regulate their obligations as aforesaid; or
c. in the absence of any such agreement or intention or

Presumption thereof

1. the particular native law and custom, or
2. such combination of any two or more native laws or customs which it appears to the court, ought, having regard to the nature of the transaction and to all the circumstances of the case, to regulate the obligations of the parties aforesaid, but if in the opinion of the court, none of the paragraphs of this subsection is applicable to any particular matter in controversy, the court shall be governed by the principles of natural justice, equity and good conscience.
2. "In mixed land causes the native law and custom to be applied by a native court shall be the native law and custom in force in relation to land in the place where the land is situated

   Provided that no native law or custom prohibiting, restricting or regulating the devolution on death to any particular class of persons of the right to occupy any land shall operate to deprive any person of any beneficial interest in such land (other than the right to occupy the same) or in the proceeds of sale thereof to which he may be entitled under the rules of inheritance of any other native law and custom.
3. Nothing contained in this section shall be deemed to authorize the application by a native court of any native law or custom or part thereof which is repugnant to natural justice, equity and good conscience or incompatible with any written law for the time being in force.
4. Nothing contained in this section shall be deemed to preclude the application by a native court of any principle of English law which the parties to any civil case agreed or intended or may be presumed to have agreed or intended should regulate their obligations in connection with the transactions which are in controversy before the court."

Section 23 consolidates all civil causes and matters, including land, and the law to be applied is

" (a) the native law and custom prevailing in the area of the jurisdiction of the court or binding between the parties so far as it is not repugnant to natural justice, equity and good conscience nor incompatible either directly or by necessary implication with any written law for the time being in force."

If the said two sections are read together, it is clear that it was not the intention of the statute to prefer Islamic law to the customary laws [15]. There is, therefore, no legal justification for the attitude of the Moslem courts. The Sharia Court of Appeal could have achieved the same object of striking down the expropriatory rules by applying the "repugnancy clause." It is not within the province of the courts to legislate. In passing, one may seize this opportunity to question the exercise of jurisdiction by the Sharia Court of Appeal in certain land causes and matters. Section 11 of the Sharia Court of Appeal Law provides: "11. The Court shall be competent to decide -

a. any question of Moslem law regarding a marriage concluded in accordance with that law, including a question relating to the dissolution of such a marriage or a question that depends on such a marriage relating to family relationship or the guardianship of an infant;
b. where all the parties to the proceedings are Moslems, any question of Moslem law regarding a marriage, including the dissolution of that marriage, or regarding family relationship, a foundling or the guardianship of an infant;
c. any question of Moslem law regarding a wakf, gift, will, or succession where the endower, donor, testator or deceased person is a Moslem;
d. any question of Moslem law regarding an infant, prodigal or person of unsound mind who is a Moslem or the maintenance or guardianship of a Moslem who is physically or mentally infirm; or

e. where all the parties to the proceedings (whether or not they are Moslems) have by writing under their hand requested the court that hears the case in the first instance to determine that case in accordance with Moslem law, any other question [16].

Thus, it is clear that the Sharia Court of Appeal is primarily intended to be a Court of Appeal on issues of Moslem personal law. This restriction is logical since it has been made the final court of appeal on any matter within its jurisdiction [17] and it is only a matter which raises a Constitutional issue that goes to the Supreme Court from that high Moslem court. There is some doubt on many cases decided by. that court as the court exercised jurisdiction while the parties had not satisfied the requirement of asking the court of first instance by writing to apply the Moslem law as shown in the cases *Liman* and *Ishaku (supra).*

Another area which is full of misconceptions is in inheritance matters. As pointed out in regard to land matters, it is justifiable in certain cases, where the ends of justice are served thereby, to allow Islamic law to prevail over customary law but injustice may frequently be done if this preference is employed indiscriminately. Nobody will doubt the advisability of the application of Islamic law in cases like *lya Maiwaina v. Mammon Captain* [18]. That case was an appeal from the Emir's 'court, Kano, to the Sharia Court of Appeal. The Appellate Court set aside the lower court's decision on the ground that it violated the Moslem law which was stated as follows: "A question has been asked concerning property in dispute between heirs, which is being held by part of the heirs only – for instance, land which is held for more than forty years. The complaint brought by a woman or some portion of the heirs must be heard, irrespective of the length of time. See *Fattul Aliyyil Juz'l*, second edition, Hayizah Chapter." The Sharia Court of Appeal determined that the four houses and the five farms in question were actually the property of Adamu, the father of lya and the grandfather of Mamman Captain. The Court ordered the Chief Alkali's Court, Kano, to redistribute the property to Adamu's heirs.

The wide assertion that, whenever a customary law differs from the Islamic law, the latter will prevail has misled some lower courts in “Northern Nigeria” to apply the Maliki Code provisions when the customary laws of the various peoples would have been more in accord with the desires of the parties involved in a dispute and which, in succession cases, would have been the law the deceased would have preferred to be applied if dead people could speak. For example, in *In the matter of Aminu* [19] the Emir's court, Ilorin, ordered the distribution of the deceased's estate in accordance with the Maliki Code even though the deceased was a Yoruba man. This Code had no claim to be preferred to the Yoruba customary law which is generally known and acceptable to the Yoruba people of Ilorin and which would have satisfied better the wishes and aspirations of someone of the deceased's way of life and society.

In conflict of laws (private international law), the *lex domicilii* is applied in the distribution of the movable property of a deceased person [20] on the basis that it is much more likely that it was the law known to the deceased and which he would under normal circumstances have wished to determine the succession of his individual estate rather than any other potentially applicable law [21]. This proposition motivated the "Northern Nigeria" legislature to permit as an alternative " the law binding between the parties" in all civil matters and causes, including land [22]. In this respect, the decisions of Brooke J. in *Tapa* v. *Kuka* [23] and *In the estate of Aminato Alayo* [24] are praiseworthy. In *Tapa* v. *Kuka,* he held that the law applicable to the estate of a deceased Nupe Moslem dying in Lagos was that of a Nupe Moslem who has died in Bida, the native place of the deceased. The Maliki Code was accordingly applied. In *Alayo's* case the issue was, which law should apply to the estate of a Moslem Ijebu woman married by Moslem rites and who died intestate in Lagos. The learned judge decided that, taking into consideration the circumstances of the deceased, Ijebu law and custom should apply.

Unfortunately, the preference for Moslem law is extended by some Honourable courts in Northern Nigeria to cases concerning testate succession. For instance, the Chief Alkali's court, Maiduguri, exercised jurisdiction over the will of *Alhaji Adamu of Sarkin* Zango [25], when it appeared that the Alhaji intended his will to be governed by English law. This fact is well evidenced by the fact that not only did the Wills satisfy the requirements of section 9 of the Wills Act 1837 but it also had two Englishmen, Mr. E. W. Thompson and Mr. C. R. Niven, as two of the three witnesses, the other being Mallam Ibrahim dan Wall. The Chief Alkali applying the Moslem law, declared: "a deceased person cannot give up all his assets to his heir after his death through ' wazi' (legacy) without the consent of other heirs. Even if the other heirs agree to this, such a person will give only one-third of the estate." The court therefore ruled that house and garden should be sold by the court and that after taking *ushira,* the remainder should be paid into the Native Treasury on deposit pending the arrival of another heir of the deceased. A better approach was taken by the Lokoja Civil Court *In the Will of Lasisi Abimbola Agbonle* [26], where the expressed will of the Moslem testator was strictly applied even though it violated the provisions of Moslem law.

Application of Islamic Jurisprudence

This leads to a consideration of the application of Islamic law in personal and family matters. It is questionable why Islamic law should be mechanically applied in these matters in some parts of "Northern Nigeria." To do so presupposes that by being a Moslem one has to live in the mode of life of the Arabs. Experience has shown that this is far from being the position. An average Nigerian, irrespective of his religious conviction, organizes his household in the Nigerian customary manner. The thesis expounded in the case of *Mariyama v. Sakiku Ejo* [27] is highly appealing. In that case two Igbirra Moslems married by Moslem rites were held not to be bonafide by Moslem law in their matrimonial affairs because "from their conduct throughout and from the way the parties both speak now it is clear that they consider themselves bound by Igbirra native law and custom in this matter and not by Moslem law." There is little doubt that this is frequently the case in "Northern Nigeria" as in other parts of Nigeria. Again, many Moslems may have only the most rudimentary knowledge of Islamic law. The attitude adopted in regard to Christians is not unreasonable. If a person performs a "Christian" marriage—the terminology is inaccurate because this form of marriage is not confined to Christians only - he has irrevocably opted to be bound by the provisions of the Marriage Act as long as the marriage subsists [28]. This all-pervading effect cannot be

said of a-marriage under Moslem rites, because such a marriage does not preclude the husband from marrying "another or others in the traditional *(i.e.,* non-Islamic) manner.

The furthest concession that can be given to the application of Moslem law in marriage matters is that if the circumstances indicate that the spouses intended at the inception of the marriage that their relationship would be governed by Islamic law, then that law would apply. The absurdity in mechanically applying the Islamic law in marriage matters is exemplified by an unreported decision, *Abdu Bafillace* v. *Rabi* [29], where the trial court relying on the established usage, granted a divorce to the necessary bride-price to the husband. Because the wife was unable to prove any of the established grounds of divorce necessary in Islamic law, the Sharia Court of Appeal reversed the lower court's decision. This implies that even when there is no more love existing between a woman and her husband, the bond of marriage will *forcibly* continue unless |he husband consents to the divorce which the wife seeks. It is submitted that, on this issue, the traditional African approach is preferable to the approach of Islamic law. It is conceded that marriage is an institution which concerns and affects the society as a whole and should not be left to the whims and caprices of the two parties directly concerned since it affects the moral standard of the entire community. The approach of traditional African law to this matter is to ensure that this great institution is not reduced to a base position.

According to the traditional law of every society in Africa, dissolution of marriage is a matter which lies in the province of the families of both spouses, and the families will not support a dissolution unless they are convinced that nothing can be done to prevent it. Thus, marriage enjoys not only the necessary permanency which it deserves; but also the dissolubility which it equally deserves as soon as it is established that the basis for the association no longer exists. In regard to the care of the children, this is well taken care of by the traditional African laws. Everything belonging to an individual, whether wife or wives, child or children, or property, merged in the family pool. Even today when individualism is increasing, the care of every member, especially the small children, is accepted as being on the shoulders of the entire *extended* family. No wonder then that the African view prevails even in "Northern Nigeria" in matters concerning the custody of the children of divorced parents [30].

The question is what ought to be the outer limit of the application of Islamic jurisprudence in Nigeria. It is remembered that Islamic law performed not only intellectual and scholastic functions, but its effects were more effective in moulding the social order and the community life of the Moslem people by exerting pressure upon their social and individual activities as a whole [31]. and that unlike Christianity in which the rules of civil, criminal and temporal relationships were generally excluded, the Holy Quranic laws contain the precepts and texts for the regulation of human relations as required in the daily individual, family and social lives [32]. But definitely they were not meant to be unchangeable for all peoples and at all times. Each aspect of the Holy Prophet's teaching was directed by the needs of his time. This point is well taken by Russell and Suhrawady in regard to the law of succession wherein the leaned authors stated that during Muhammad's time, when a man died, his whole belongings passed to his nearest agnate (or male relative through males), who was of age and capable of bearing arms; *e.g.,* his sons or his son's son, his father or his brother, etc. Maternal relations had no right to any share, while step-mothers were in a still worse position, inasmuch as they passed absolutely to the heir, who might retain them as wives or dispose of them by sale. This was the working-out of the system of descent through males. On the other hand, under the older system by which children were reckoned as of the mother's tribe, property would devolve from a man, not to his son but to his sister's son and the maternal bond was all important. This earlier system lingered in the memories of the people; and the close and warm relations commonly existing between a man or a woman and his or her mother's relatives came occasionally to disturb the natural course of devolution. Here, again, the course chosen by the Holy Prophet was a middle one: he retained the more modern principle—as it then was in Arabia—of agnatic succession but accorded recognition to the natural instincts of non-agnatic kinship, by assigning to the mother (or, failing her, to the maternal grandmother, etc.), a fixed share in the succession of the child and granting her n case of repudiation the custody of her children till the age of puberty. Daughters also were admitted to share the succession along with sons, and sisters along with brothers, receiving as their share half that accorded to their brothers [33].

Conclusion and Prescriptions

Thus the attitude of the Honourable courts in the Southern parts of the country as shown in the two cases, where Moslem law was considered, is noteworthy [34]. It is encouraging that "Northern Nigeria" has shown the same attitude by replacing the Islamic and customary criminal laws by a non-religious Penal Code [35]. This modern development has proved more intelligible to the people and has been found to be inoffensive to Islam. It may be emphasized that a complete abrogation of Islamic law in Nigeria is not being advocated herein by the writer, but it is my considered view that, in applying the laws which were evolved to satisfy the needs of a different society, much caution is desirable and their application ought to be governed by the expressed or implied desire of the people concerned. Thus, it is suggested that Islamic law should be applicable only when the parties have selected Islamic law to bind them in a particular transaction or when the matter in question is known to no other law but the Islamic law. This virtually is the position occupied by English law in matters concerning Nigerians and, to my mind, it is the rightful place any introduced law, including Islamic law, ought to occupy.

References

1. See The Nigerian Constitution (prior to the last official census and before the Decree creating 12 States in Nigeria), 1963, 4.
   For instance, the existence of acephalous societies, such as the Tiv, must also be acknowledged and noted.
2. Trimingham S. A History of Islam in West Africa (Rouledge, 1962) 32. Further study on origin of
   Islam, see R.F. Safa, Inside Islam; exposing and Recheaching the World of Islam (Frontline, Strang Company,1996, 24.
3. See The Emirs' and Chiefs' courts of Grades A and A Limited were abolished on the 1st day of April, 1967.

4. This term includes in this context, Emirs' courts, which are not Moslem courts in the strict sense.
5. A. Yusuf, The Holy Koran (Amana Corporation, 1983); A. Bello, My Life, 1962, 10-11.
6. An unreported decision of the High Court delivered on the 28th day of March, 1955.Most
   Fortunately both the Supreme Court and the Privy Council with due respect, disagreed with his view. See [1962] 1 W.L.R. 1053.
7. See CM, Mc Dowell, Journal of the Centre of Islamic Legal Studies] Ahmadu Bello University, Zaria, J. Eleonu, 'Islamic Feminism: An Appraisal' (2018) (5) Port Harcourt Journal of Business Law,2018:22(1):150-162.
8. [1951] J.A.A. 9.
9. Elias TO. Nigerian Land Law and Custom, (Sweet and Maxwell,1962) 96 see also C.C. Wigwe,
   Land Use and Management Law (Mountcrest University Press,2016); H. A.I Luning, "The Impact of Socio-Economic Factors on the Land Tenure Pattern in N. Nigeria,"(1965) Journal of Local Administrations Overseas,pp10-50.;F.J.Fekumo,Principles of Nigerian Customary Land Law (F& F Publishers,2002); Hon. Justice I.A. Umezulike, A B C of Contemporary Land Law in Nigeria (Snaap Press Nigeria Ltd.,2013).
10. Case Notes of Northern Nigeria (NNCN), No. 27 of 1963.
11. NNCN Nb. 25 of 1962, 65.
12. NNCN Nb. 27 of 1963.
13. See Cap. 78 of the Laws of Northern Nigeria.
14. Cap. 122, The Laws of Northern Nigeria 1963.
15. Cap. 122, The Laws of Northern Nigeria 1963; See also S.277 0f the 1999 Constitution of Nigeria as (Amended).
16. See Cap. 122, The Laws of Northern Nigeria, 1963, S. 12.
17. NNCN No. 241 of 1963.
18. Decided on the 20th day of September 1966.
19. *Hewitt* v. *Cox* (1891) 55 Ark. 225, *Simmons* v. *Simmons* (1942) 203 Ark. 556, *White* v. *Tennant*
    (1888) 31 W.Va. 790, *Restatement of Conflict of Laws* § 303 [America], *In the Estate of Maldonado* [1953] 2 All E.R. 301 [England].
20. Immovables are excepted on ground of enforceability; the *lex situs* governs.
21. Cap. 122, Laws of Northern Nigeria 1963, S. 23.
22. (1945) 18 N.L.R. 5.
23. (1946) 18 N.L.R. 88.
24. Case No. 326/755 of October 24, 1953.
25. Decided on the 7th day of December, 1963.
26. [1961] N.R.N.L.R. 81.
27. See *Coker* v. *Coker*, 17 N.L.R. 55.'Matrimonial Causes Act, No.18,1970; Marriage Act
28. SCA/CV17/1961.
29. *See generally the Journal of the Centre of Islamic Legal Studies,* A.B.U., Zaria, 1, 16-17.
30. A.k.Qadri, *Islamic Jurisprudence in the Modern World (Twayne Publishers,*1963) 20;C.C.
31. Wigwe, Jurisprudence and Legal Theory (Read wide Publishers, 2011) 267-357.
32. Qadri, (31) 31.
33. See Introduction to *First steps in Muslim Jurisprudence (*1906), 16-17.
34. *Tapa* v. *Kuka, (supra) In the estate of Aminatu Alayo, (supra.).*
35. N.R., No.18 of 1959.