



## JURISDICTIONAL CONFLICTS BETWEEN SHARIAH COURTS AND COMMON LAW COURTS IN THE APPLICATION OF ISLAMIC BANKING AND FINANCE IN NIGERIA

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### ABSTRACT

The growth and development of Islamic Banking and Finance in Nigeria depends on the courts in which its dispute resolutions are anchored. The court for Islamic banking and finance dispute resolution and its practitioners must be knowledgeable and versed in Islamic finance law. Despite this, those who are trained in common law, either as judges or advocates, continue to weigh a considerable influence in matters that border on Islamic banking and finance dispute resolution. As such the judges and advocates enjoyed the constitutional backing. However, the situation is affecting the disputes resolution on Islamic finance and the growth of Islamic finance in Nigeria. In order to solve this peculiar problem, this paper analyzes how the common law trained judges and lawyers have and may have considerable influence in the resolution of Islamic banking and finance disputes in the country. This more so emphasizes that dispute is inevitable in any human endeavors. However, Islamic finance dispute should be resolved by those who have knowledge on Shariah and versed in Islamic finance. It is recommended that those judges and lawyers that have Shariah and Islamic finance law knowledge should be considered to hear and determine any matters associated with Islamic banking and finance in Nigeria. However, if applied, it will assist the growth and development of the dispute resolution sector in the court of law. At the same time it will assist the growth and development of Islamic finance in Nigeria.

## 1. Introduction

Nigerian will use Islamic finance products as their first choice, if the prices are fair enough and acceptable in the market couple with free-interest, gambling and uncertainty. In the course of this transaction, as would be the case with any other human endeavors, disputes are inevitable (Sambo and Akanbi 2012). Yet, the constitution empowered people who are not trained on Islamic finance in the act of dispute relation in court of law play significant roles in the act of resolving disputes emanating from Islamic finance transactions. This is based on the influence that existing in the legal frameworks in Nigeria.

The growth and sustainability of Islamic banking and financial system in Nigeria, like any other institutions, depending largely on how it nurtures and protects the institutions where disputes are finally resolved with the contractual parties. However, the ability to settle Islamic finance disputes depends on the knowledge of the presiding justice and legal practitioners who are in the charge of dispute resolution. Where this is not put in place, a lot would have been done in vein. The influence of those who do not have sufficient knowledge about Islamic banking and finance but are allowed by legal frameworks to decide such matters may cause miscarriages or misplacement of justice. Hence, will affect the growth and development of Islamic banking and financial system in Nigeria. Furthermore, the Nigerian banking legal frameworks that have been guiding the operation and performance of Islamic banking and finance are structured and designed for conventional banking system. Thus, there is no specific legal framework for Islamic banking and finance in the country, which supposed to be structured and designed according to *Shariah*. The constitution of the country is yet to recognise Islamic banking and finance institutions fully. As such, there is yet to be established an institution or court of law for the settlement of dispute between the Islamic bank and the contracting parties.

## 2. Literature Review

The researcher was able to have access to some relevant works and studies on the trend of the Islamic banking and finance dispute resolutions in Nigeria. Hence, there are books and articles written in respect of the legal pluralism system operating in the courts in Nigeria. That has been one of the major problems faced by Islamic banking and finance. Meanwhile, some works have combined facts and information on the legal framework of Islamic banking and finance that are in line with *Shariah* norms of certain environments which do not fall within the scope of this paper. The researcher discovered that no work specifically deals with the current research pertaining to this study in any way. Some of the materials do however cover another relevant perspective on the concept of Islamic banking and financial institutions. This has created a wide gap which needs to be bridged. As a result, this research work is considered necessary to be carried out, in order to bring to light the significance and importance of this area to society. Besides that, the study aims to contribute to the existing works by critically exploring various legal ways through which legislation of the Islamic banking system in general could be effectively applied and utilized in Nigerian society. In the course of doing this, the study tends to depart slightly from the approaches used by earlier researchers in this field for the purpose of coming up with tangible results that would be of immense value and great help to the implementation of the laws guiding Islamic finance activities and transactions including settlement of dispute between the contractual parties of Islamic banks in Nigerian society.

### 2.1 *The problems of Nigerian legal system on Islamic banking and Finance*

The legal pluralism system operating in the courts in Nigeria is a legal problem facing by Islamic banking and finance. (Park, 1963; Adeyemo and Sadiqq, 2012) argue that the existence of three legal systems operating in Nigeria (common law, Islamic law and customary law) is not the best for the unity of Nigeria. Nwogugu (1976), Agbede (1989) and Aguda (1985) argue that the common law, which is imported by colonial master to Nigeria should emerge as the general law applicable to all the citizens of Nigeria in the court of law. Meanwhile, Abdur Rahman Doi (1984) argues that it is not acceptable to the Muslims to be mixing Islamic law with any other laws. Belgore (2003) and Anyanwu (2006) also want Islamic law to remain separately and to be administered by court systems parallel to English law courts. However, the government has a lot of role and the responsibility in respect to the issues relating to the Islamic banking matters in Nigerian courts.

### 2.2 *Jurisdictional Tussles between the Federal High Court and State High Court in adjudicating on Islamic banking Matters*

Sanusi (2011) made a general study of the problems facing Islamic banking and finance institutions in Nigeria. In the end, he mentions ten problems facing Islamic banking and finance institutions. One of the problems is lack of a comprehensive legal framework, especially at the levels of operation and settlement of dispute between the contracting parties; while Sambo and AbdulKadir (2015) have analysed the jurisdictional tussles between the Federal High Court and the State High Court in Nigeria. They also examine exclusively the legal problem associated with the common law judges. The judges have no background knowledge on Islamic finance, and they have been empowered by the Nigerian legal frameworks to be adjudicating on issues relating to Islamic finance. The study also affirms that the *Shariah* court judges who have Islamic knowledge can only be adjudicating on Muslim personal law, not Islamic finance. This is because the appointment and the qualification of the judges of the *Shariah* court do not qualify them to hear and determine matters on Islamic finance. They also argue that the advocates that have right of audience in those courts are not trained in this regard, except

a few ones who have combined the study of common law and Islamic law. In addition, the effect of this is misplacement or miscarriage of justice occasion as a result of lack of sufficient knowledge on the part of judges and the lawyers.

### **2.3 The Impact of BOFID, 1991 on the Establishment of Islamic banking and Finance in Nigeria**

Abikan (2009) and Dogarawa (2013) advocate that the provision of sections 23 (1) (BOFID, 1991) of the CBN is the legal basis for the establishment and operation of Islamic banking and other financial institutions in Nigeria. But the provision does not provide a comprehensive legal framework as a working instrument for the bank. Thus, Bello and Abubakar (2014) argue that the regulatory framework of Islamic banking in Nigeria is considered inadequate. The regulations and policies are not effective and yield no result, due to the fact that they are not structured according to *Shariah* principles. Therefore, the policies have failed to provide a legislation that covers and protects the depositors against loss in the event of failure of any bank that offers Islamic banking services. The regulations and the policies could not protect the investors and depositors on the products of Islamic banks. Therefore, the aim of establishing the regulations and policies has been defeated.

### **2.4 Comparative Analysis of Shariah governance**

Rusni *et al.* (2013) in their paper entitled "A comparative Analysis of *Shariah* governance in Islamic banking Institutions across Jurisdictions", critically examine, compare and analyse the discrepancy in *Shariah* governance practices between Islamic banking and finance institutions in various jurisdictions such as Malaysia, Indonesia and United Kingdom. The researchers have classified the practise of *Shariah* governance into three models. The first model is centralized in *Shariah* authority: it refers to the countries that are controlling the Islamic banks and financial institutions at the central level such as Malaysia. The second model is exclusive central of *Shariah* body: it refers to some countries that have their own central body to govern Islamic banks such as Bahrain. The third model is the self-regulatory *Shariah* governance: it refers to the countries whereby the *Shariah* governance legislation decisions are made at the institutional level. However, the research finds that the *Shariah* governance legislation for Islamic banking and finance institutions in the countries under this study are in place. The system adopted by each country varies. It depends on the legislation governing the Islamic banking business. However, in Nigeria the legislation governing the Islamic finance is based on the decision made by the institutional level. Therefore, there are issues to be addressed in the existing *Shariah* governance legislation in Nigeria regarding the jurisdictional conflicts between the *Shariah* courts and common law courts regarding the application of Islamic banking and finance in Nigeria. It needs to be addressed in order to improve the status quo of Islamic banking and finance institutions.

## **3. The Trend of the Establishment of Islamic Banking System in Nigeria**

The modern Islamic banking system in Nigeria started in the 1980s by way of pressure through seminars, conferences and symposia (Dogarawa, 2013). For example, in 1985, an international seminar was held entitled "Frontiers and Mechanics of Islamic Economics", which was organized by the Bayero University, Kano, in collaboration with Usman Danfodio University, Sokoto. Meanwhile, the main objective of the programme was to educate the general public on Islamic banking and finance and the need for interest-free banking system in Nigeria as an alternative option to the conventional banking system (Nasiru and Mansur, 2015).

In 1999, the enactment of the Banks and other Financial Institutions Decree by the federal government of Nigeria (1991 BOFID (now an Act), that recognized Profit and Loss Sharing Bank. It is defined by Section 61 of the law (BOFID, 1991) as stated: "A bank which transacts investment and banking business and maintains profit and loss sharing account." Also, Under section 23 (1) of the law, Profit and Loss Sharing banks were exempted from displaying at their offices their

lending and deposit interest rates (BOFID,1991), thus Profit and Loss Sharing banks are not allowed to display lending and deposit interest because they are not allowed to charge interest on their dealing.

According to Abikan (2013), the provision of sections 23 (1) (BOFID, 1991) of the bank is the legal basis for the establishment and operation of Islamic banking and other financial institutions in Nigeria. In 1999, Nigeria embraced constitutional democracy. The 1999 Constitution has provisions that are supporting the operation of Islamic banking in the country. However, chapter two of the constitution deals with the fundamental objectives and directive principles of the state policy; Section 13 and Section 16 (1) (b) mandate the government, its organs and authorities to provide and protect the right of participation in one's chosen economic activity (CFRN, 1999). For the affirmation of the above sections, the Court of Appeal in *Okogie and others v. Attorney General of Lagos State* [1981] 2NCLR 337, while interpreting a similar provision, ruled that every Nigerian citizen or corporation has the right to carry on his chosen economic activities.

Banking business, be it conventional or Islamic, falls within the economic activities permitted and guaranteed under the chapter two of the Nigerian constitution. Thus, implication, a Nigerian citizen is constitutionally entitled to participate in a banking business of his choice. And once a citizen has set on a banking business of his own choice, this right must be recognized and protected by the government, their agents and authorities, as directed by the constitution and the judicial authority. Making this argument clearer, every Nigerian citizen has the right to decide on the type of banking business he wishes to undertake.

Meanwhile, Section 38 (1) of 1999 Nigerian Constitution (now repealed 2004), which also recognizes and guarantees freedom of religion, entitles one to establish and participate in a banking business which is consistent with one's religious belief and practice. Thus, a citizen is enjoyed his fundamental right to freedom to practice the religion of his choice. The same constitution prohibits discrimination on account of religion under Section 42 among other rights. By this section, every Nigerian is guaranteed against being subjected either expressly by or in the practical application of any law enforced in Nigeria or any executive or administrative action of the government in respect of disabilities or restrictions to which citizens of Nigeria from other communities, ethnic groups and place of origin or political opinions are not made subject to (Nasiru and Mansur, 2015).

In the late 1990s, a significant breakthrough in the establishment and operation of Islamic banking system was made by the appearance of the first Islamic Banking Window in Nigeria. This opportunity was offered by the former Habib Bank Plc in Nigeria. The bank was granted banking license to practice conventional banking business in the country in 1983. It later, in the late 1990s, created a department from its core banking business for the purpose of offering non-interest banking products to the public (Dogarawa, 2012). This type of arrangement is called Islamic banking window. Habib Islamic banking window offered banking services in the forms of current and deposit accounts devoid of interest. In other words, the bank under this arrangement neither charged nor paid any interest on any of the two accounts. In the area of investments, the bank, among other things, offered joint venture project financing on the basis of the principles of *Musharakah* and *Mudarabah*. Similarly, the concept used by the bank on its trade financing products is based on *Mudarabah* and rental venture products modeled from the rules of *Ijarah* (Habib Bank, 1999). As a result of the recapitalization policy on commercial banks in 2004, Habib Bank merged with Bank PHB to become Platinum Bank Plc and the Islamic banking window arrangement was abandoned.

By the year 2001, the Muslim general public had been fully aware of the need to have an Islamic bank as an alternative option to the conventional bank in Nigeria. Furthermore, the public wanted to consolidate the openings on the legality of Islamic banking business and the recorded success of the introduced Islamic banking window in the country. Thus, this development has led to public pressures for the establishment of full-pledged Islamic banks in the country. Consequently, with the resolution reached during the Second International Seminar on Islamic Banking and finance, organized by Ahmad

Zakari and Co in between 30<sup>th</sup> June-1<sup>st</sup> July 2001 at Abuja. The Central Working Committee of the Promotion of Non-interest financial system in Nigeria was formed (Idris and Lawal, 2013). This is how the situation continues till 2011, when the Central Bank of Nigeria granted license to Jaiz Bank Plc as the first full-fledged Islamic bank in Nigeria to be operating regional Islamic bank (CBN, 2011); while the national license was granted on 13<sup>th</sup> day of May 2016 (Nduka Chiejana, 2016), for the purpose of enjoying a nationwide operation.

Another milestone in the development of Islamic banking in Nigeria took place in 2012, when the Central Bank of Nigeria (CBN) granted license to Stanbic IBTC Bank Plc to be practicing Islamic banking window. In the same year, the bank started the operations of Islamic banking window in all its 180 branches across the country. The Islamic banking window of the Stanbic IBTC bank offers Islamic banking investment products conceptually carried out in accordance with the principles of Islamic commercial jurisprudence. Such products include *Imaan Ijarah* for vehicle and asset finance, *Imaan* trade finance, *Imaan* distributor and inventory finance for traders and manufacturers (Oladimeji, 2016). In the year 2009, Sterling Bank, a merchant bank, showed its interest in Islamic banking transaction in Nigeria; and in December 2013, the bank got license from CBN to be operating *Iman* window basically on Islamic finance. To this end, some new staff members, who are very relevant in the field, were employed, in order to fulfill the basic requirements of *Shariah* principle in respect of this commercial transaction (Dogarawa, 2013).

As a result of the establishment of Jaiz Bank Plc, some universities have addressed and given priority to the intellectual and manpower needs of Islamic banking and finance industry, as the evolution and the development of Islamic banking in Nigeria is considered a turning point and milestone in Nigerian society (Nasiru and Mansur, 2015). In this regard, the International Institute of Islamic Banking and Finance (IIIBF), Bayero University Kano, was established in 2011 (Nasiru and Mansur, 2015). Thus, this Institute has been making a lot of efforts towards the promotion and enhancement of an ideal Islamic banking and finance. Its efforts and activities include several researches being carried out through a number of publications, seminars and conferences. In the field of manpower development, the Institute has vigorously started offering academic and professional postgraduate studies. In addition, it provides short training programs through which the practitioners of Islamic banking and finance are being informed, trained and exposed to the necessary skills required for Islamic banking operation (IIIBF, 2012).

Jaiz Bank Plc has been improving on its services, therefore, it has 21 branches nationwide in the thirteen states and federal capital of territory Abuja. They are Lagos, Port Harcourt, Yola (Adamawa state), Sokoto, Ilorin (Kwara state), Ibadan (Oyo state), Gusau (Zamfara state), three branches in Abuja, Katsina, four branches in Kano, Maiduguri (Borno), Gombe, two branches in Kaduna state, two branches in Bauchi state(<https://nigerianfinder.com/jaiz-bank-branches-in-nigeria-the-full-list/> accessed on 25/4/2018 at 11.34pm )

#### 4. Islamic Banking Products and Services

In order to go away from any transaction which does not with the support of *Shariah*, Muslim Jurists came up with some alternative products which Islamic banks can offer to their customers for their day to day transactions. The alternative products gained support from the Holy *Quran*, the *Sunnah* of the Holy Prophet and other sources of *Shariah*, they include *Mudarabah* (Profit and loss sharing), *Musharakah* (Partnership), *Murabaha* (Cost Plus Profit Sale Contract), *Bai 'ul-salam*, (Forward Sale), *Istisna'a* (Order to Manufacture Sale), *Ijarah* (leasing), and so on (Adeyemo et al, 2017). Meanwhile, all business arrangements under Islamic banking system where two or more people will pool their resources together by way of money or money worth, entrepreneurship or trustworthiness fall under *Ijarah*, or *mudarabah* or *musharakah* (Abdul Rahman 2010). Similarly, the solutions offered by Islamic finance allow access to funds, including non-interest banking, *Takaful* (Islamic Insurance), Islamic microfinance, *Sukuk* (Islamic Bonds) and Islamic Asset Management. However, Islamic finance is profit-oriented (Sanusi, 2011). The bank system is based on Islamic moral and

ethical values. As part of the activities of Islamic finance, the account/ finance of the institution includes deferred payment sale; short-term deposit; simple account; current account and retail savings account.

##### **5. Detriment/Conflict of the right of the *Shariah* Court in Adjudicating Islamic Banking Matters in Nigeria**

According to Bello and Abu Bakar (2014), the current legal frameworks of Central Bank of Nigeria (CBN) on the establishment and business of Islamic banking are structured in line with the conventional banking system. The structure and design are to suit the conventional settings. Unfortunately, the constitutional provision is also silent on the matter relating to the settlement of dispute between the contracting parties in the court of law. Thus, there is no provision for the adjudication of conflicts associated with the Islamic banking products, entities and finance contracts (Sanusi, 2011). The judges who are trained under the English law (common law) might have a continued influence on the adjudication of dispute arising from Islamic banking and finance matters in Nigeria. This is because the Nigerian legal framework has empowered them. The constitution of Federal Republic of Nigeria has conferred the judge of Federal High Court or a State High Court the jurisdiction to hear and determine many matters relating to the banking and finance, which Islamic finance is included (S. 251(1) (d) and 272 CFRN, 1999).

However, if the matters involve the relationship between the banker and the customer, Federal High Court judge has no exclusive jurisdiction; the plaintiff has the right to institute the action either through the Federal High Court or a State High Court. The problem is that the judges in these courts are not qualified to hear and determine the matters relating to Islamic banking and finance; they do not have sound knowledge and sufficient savvy in this field. Actually, the law spelt out the qualification of the two Courts judges but does not expressly add that the judges must have an Islamic law or Islamic finance background. However, any dispute arising from Islamic finance will be referred to the Federal High court or State High court. These courts are specifically devoted for the matters concerning the conventional regulations. The emphasized that the Nigerian constitution empowers the judges of the courts to be adjudicating on issues relating to the banking and finance in general. The courts have a procedure to be followed when determining matters, thus, common law proceeding would be followed. Therefore, the principles of Hire Purchase Act (1967) will be applied in resolving the matter, which is tantamount to the principle of *Shariah*. The spirit of the real concept of Islamic finance from the perspective of *Shariah* is not fully implemented (Aisyah, 2014).

Besides that, the jurisdiction conferred on the *Shariah* court of Appeal of a state, which is supposed to solve the problem, is also not effective. This is because the jurisdiction conferred on the judge of the *Shariah* court is dedicated to entertaining only Islamic personal law- that is the constitution does not include the matters on Islamic finance in their jurisdiction (S. 277 (1) and (2) CFRN, 1999). However, another problem is associated with the so-called judges of *Shariah* court. The appointment of the judges of *Shariah* court is kind of haphazard. This is because they do not possess sufficient knowledge and qualifications to hear and determine the matters on Islamic finance. This is because some of them do not have degree (LL. B & BL) in either *Shariah* law or common and Islamic law.

Although, those *Shariah* court judges (with degree in *Shariah* or common and Islamic law) who have an Islamic knowledge; but the constitution has limited the jurisdiction of the court to be adjudicating on Islamic personal law such as family law, gift and *waqf*. The constitution does not include issues relating to the Islamic banking and finance. Therefore, the appointment and the qualification of the judges of the *Shariah* court do not empower the judges to hear and determine matters on Islamic banking and finance (Sanusi, 2011).

Meanwhile, *Shariah* court of appeal of a state has a coordinate jurisdiction with the Federal High Court or the State High Court, allowing the Federal High Court or the State High Court to exercise jurisdiction in Islamic finance matters. Such expansion of the jurisdiction is to the detriment of the right of the *Shariah* Court of Appeal of a state. Whenever the Islamic banking and finance matters are brought before either the Federal High Court or the State High Court, the common

law procedure would be used in determining the matters. However, the result will be the miscarriage of justice in the sight of *Shariah*.

Besides that, the appeal from Federal High Court or the State High Court or *Shariah* Court of Appeal of a state goes to Court of Appeal, whereas the appeal from Court of Appeal goes directly to Supreme Court. If a party appeals against the decision of *Shariah* Court of Appeal of a State. The problem is that in the Court of Appeal or the Supreme Court (section 230 (1) of the CFRN, 1999), where the judges do not have the Islamic knowledge or a background knowledge on the matters associated with the principles of Islamic finance, they might coerce the decision. According to Sambo and Abdulkadir (2015) “the end result is miscarriage of justice occasioned by ignorance or injustice at the highest bench of dispute resolution. This may affect the growth and development of dispute resolution aspects of Islamic finance knowing fully well that disputes in the course of such interaction, like any other human endeavors, are inevitable”

Thus, the Nigerian constitution silent on the issue and CBN does not empower the *Shariah* Advisory Council and *Shariah* Advisory Committee of Experts of Islamic bank to act as re-conciliators between the banks and their customers. In Malaysia, the problem has solved with the Practice Direction No. 1 of 2003, which was issued by the Chief Judge of Malaya to all the legal practitioners to register Islamic banking and finance cases at courts using a special code number. So that it can assist the registrar of the court to direct the matter to suitable court and judge that versed on *Shariah*. Besides that, Bank Negara Malaysia (BNM, 2009) also empowered *Shariah* Advisory Council to serve as a disputes resolution in any Islamic banking and finance matters (Abdul Hamid, 2016). However, the serving judge may be appointed as a member of the *Shariah* Advisory Council. In order to solve the problem finally, the *Muamalah* Bench/Division was established to be hearing and determining issues on Islamic finance, which is specifically devoted for all matter bordering on Islamic financial transactions; the court was vested with an exclusive and restrictive jurisdiction to hear and determine, as a court of first instance, all matters or disputes arising from the operations of Islamic banks in Malaysia are now directed to *Muamalah* Bench/ Division. The judge of *Muamalah* Bench/Division is versed in *Shariah* and Islamic finance law (Abdul Hamid, 2016).

## 6. Conclusion and Recommendation

The laws regulating banking activities in Nigeria are principally meant for the regulation of the conventional banking sector; hence, it is practically impossible for same laws to cover all the activities of Islamic banking system which was established a few years ago. Notwithstanding, this new banking system has tendency to survive and grow, if concerted efforts are made by the concerned institutions, like the Central Bank of Nigeria, Securities and Exchange Commission and the Nigeria Deposit Insurance Corporation, in issuing new guidelines complying with the principles of Islamic banking and finance sectors. This fact is not farfetched, because of the unique nature of the Islamic banking system which frowns against any dealing involving interest and other prohibited transactions or investments under *Shariah*. Besides that, having a recourse to the Malaysian Islamic banking system is also a testimony to the tendency of the Nigerian Islamic banking system to eventually succeed.

The Nigerian constitution should extend jurisdiction of *Shariah* Court of Appeal of the state and empower it to be adjudicating disputes that involve Islamic banking and finance matters. The reason is that the court is also a superior court of record in Nigeria having a coordinate jurisdiction with the Federal High Court or a State High Court. The judges or *Kadis* of the *Shariah* Court are trained in matters of Islamic law, but they may be required to do a little more training in Islamic finance. However, the problem with this arrangement is that matters may still go on appeal to the Court of Appeal or the Supreme Court, where the judges do not have sufficient knowledge or background knowledge about the matters concerning the principles of Islamic finance.

This study recommends that the diverse laws in the country can only be effectively and efficiently administered, when there is a separate court that will be hearing and determining Islamic finance matters. As this paper has shown, the way the Nigerian courts operate is multidimensional. The Federal High Courts, the State High Courts, and the State *Shariah* Courts of Appeal are all coordinate courts. They always operate with parallel and overlapping jurisdictions. The Court of Appeal always deals with the appeals made by the coordinate courts, that is the Federal High Courts, the State High Courts, and the State *Shariah* Courts of Appeal. However, the Supreme Court is dedicated to hearing and determining the appeals brought by the Court of Appeal. Malaysia has established *Muamalah* bench, which is empowered to be dealing with all the issues associated with Islamic banking and finance institutions. This development has served as a solution to the legal problem of Islamic finance in the nation. This should also be adopted in Nigeria. In this connection, if Nigeria were to adopt the Malaysian style explained above, it would involve the amendment of the Nigerian constitution. This is because the establishment of a separate court to be hearing and determining issues relating to the Islamic banking and finance institutions is a very sensitive issue.

In another recommendation, the current jurisdiction of the *Shariah* Court of Appeal of State under section 277 of 1999 constitution covers all the matters concerning Islamic personal law, among others. It is therefore better to amend this section of the constitution in a manner that will incorporate Islamic finance. As such, the court shall serve as a court of first instance. If this suggestion is put into action, it will relieve the Federal High Court and the State High Court the burdens of handling matters in which the judges have not been trained and conversant with. Therefore, Islamic finance cases would be placed within the jurisdiction of *Shariah* court judges, who are Islamic finance experts. By doing this, and to some extent, the problem of illegality and allied issues, as advocated by the opponents of the system, will be solved. If the Court of Appeal and Supreme Court, as the highest court in Nigeria, intends to exercise jurisdiction on *Shariah* and Islamic finance matters, as the last appellate court in Nigeria respectively, there is need to have capable hands to deal with the appeals. This requires the involvement of the experts in Islamic banking and finance. This paper recommends that the constitution of Nigeria should be amended to provide for a special panel of three and five justices of the courts, who are learned in Islamic finance to hear and determine all Islamic finance appeals in the courts respectively.

There is need for periodical trainings, seminars and workshops to be organised for the judges or *Kadis* of *Shariah* court, where they would be introduced to the practical judiciary proceedings in respect of the matters associated with Islamic banking and finance institutions. This action will enhance the quality of the judiciary proceedings holding in the courts, particularly on the Islamic banking and financial institutions that are considered as a newly introduced institution in the society.

In order to make the common law trained lawyers that are appearing in courts or *Shariah* courts more fit and qualified in handling the cases of Islamic banking and finance, the paper hereby suggests that the lawyers undergo a professional training on Islamic banking and finance institutions. This training or workshop would open their eyes to a lot of information on Islamic banking and finance. They would be equipped with a practical *Shariah* professional training relating to the matters involving Islamic banking and finance. In the training, there should be interactions with more learned colleagues on Islamic finance, especially from other Muslim countries like Malaysia where there are scholars who have sound knowledge and ample experience on Islamic banking and finance.

As a way of developing the Nigerian Islamic banking sector, the Central Bank of Nigeria should use its Islamic Finance Department judiciously and come out with a policy for the implementation of all the recommendations made or to be made by the experts in any research conducted, seminar or workshop held on Islamic banking system.

The result of the paper has clearly shown that the paper will contribute to academic discipline and it will also be an instrument to government, Islamic bankers and Muslims as whole. The paper also suggested more studies in the



investigation of the laws (Shariah) to be used in the court beside the conventional way of dispute settlements are necessarily. However, more efforts should be made by Islamic scholars and Jurist to get more Islamic banking and finance with alternative dispute resolution instead of legal battles in the courts of law.

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