

Revisiting the Jurisprudence of the Appellate Courts on the Jurisdiction of the Shari'ah Court of Appeal under Selected Nigerian Constitutions

Authors : Dahiru Jafaru Usman

Abstract : Nigerian courts have been sanctioned by a plethora of authorities to always employ the literal rule in interpreting statutes where the language of the statute is clear and unambiguous. This cardinal rule of interpretation appears not to be employed on Shari'ah issues in Nigeria. This is more pronounced in the interpretation of the jurisdiction of the Shari'ah Court of Appeal (hereinafter the court). The paper doctrinally assesses the judicial attitude of Nigerian appellate courts towards the construction of Section 277 of the 1999 Constitution as amended and other relevant statutory enactments by the State Houses of Assembly. The paper argues that a careful examination of the wordings of the constitution on the jurisdiction of the court literally reveals the intention of the constitutional drafters empowering the National Assembly and States' House of Assemblies to add to the itemised jurisdictional areas of the court other matters not mentioned. The paper found that the appellate courts failed in their construction of the constitutional provisions to accord the words and phrases used in the establishment, jurisdiction, and quorum sections of the court their ordinary and grammatical meaning. This results in consistent limitation of the jurisdiction of the court to matters of Islamic personal law. This remains so even when Decree No. 26 of 1986 was in force suspending and amending the provisions of the 1979 Constitution deleting the word 'personal' in the suspended Nigerian Constitutions. In order not to render section 277 futile, the paper recommends that appellate courts in Nigeria should as required by rules of statutory interpretation adopt literal and ordinary grammatical meaning in interpreting constitutional provisions on the jurisdiction of the court. It is further recommended that appellate courts must interpret the provisions of the 1999 constitution in a manner not to frustrate the several decades' yearnings of the Muslims for a court that would hear all their appellate criminal and civil matters on the path of Shari'ah from the lowest court to the highest. This is a duty the Nigerian Supreme Court placed on their shoulders.

Keywords : interpretation of statutes, jurisdiction, literal rule, Nigeria, Shari'ah Court of Appeal, 1999 Constitution

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