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Curbing Delay of Justice on Ground of Jurisdiction in the Nigerian Courts: Lessons from the Islamic Law

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Abstract. Delay of trials is a big hiccup to the administration of justice in Nigeria. Delay is usually caused by litigant's challenge to the jurisdiction of the trial court and appealing the court's ruling all through the hierarchy of the appellate system, taking decades, sometimes, to resolve. The Supreme Court has severally lamented over this abuse of court processes yet, no 'judicial or legislative will' has been employed to stop it. This research therefore analyses the manners by which justice is delayed and/or denied by challenging the court's jurisdiction and exercising right of appeal. It finds that the lamentation by the apex court on the abuse of the process cannot solve the problem. It presents the Islamic law approach to the issue as a more balanced alternative and recommends its adoption along with constitutional amendment. It propounds the theory of Finality in Favour of Jurisdiction "FiFoJ" for adoption in the alternative.

Keywords: Justice, Delay, Nigeria, Islamic Law.

1. Introduction

Delay or longevity in litigation is one of the major challenges still being faced by the Nigerian judicial and justice system. The commonest cause of such delay is the period it takes for an issue of the jurisdiction raised at the trial court to be finally determined by the Supreme Court and by which the Supreme Court either agrees with the trial court or disagrees. If the Supreme Court agrees with the trial Court that it had no jurisdiction, then the matter would be struck out for lack of jurisdiction. But, if the Supreme Court finds, contrary to the decision of the trial court, that the trial court has jurisdiction, then the matter would be sent back to be heard on the merit. All this involves serious time, cost and energy expenses. It is not out of place to say, in such circumstance, that justice might have been denied in the case due to the delay.

The court system in Nigeria is in three folds. There are courts applying the Common law, some operate the customary law while some others apply the Islamic law. This is not surprising given the tripartite nature of the country's legal system whereby the Common law, the customary law and the Islamic law exist side by side to make what is known as the Nigerian legal system.

By way of sharp classification, the Nigerian law can be divided into the substantive law and the procedural or adjectival law. Substantive law is

that aspect of the law that merely lays down people's rights, duties, liberties and powers without providing for means by which such rights, duties, liberties and powers can be enforced. Adjectival or procedural law on the other hand lays down means and put in place mechanisms by which all the stated 'goodies' provided by the substantive law can be practically enjoyed or enforced. It has been observed that adjectival law particularly concerns procedure and evidence. A.O. Sanni explains what substantive law and adjectival law connote under the Nigeria law. In his view, substantive law is a generic term embracing such subjects such as Law of Contract, Torts, Criminal Law, and Constitutional Law etc., which are concerned with a statement of rights, duties and liabilities of individuals. For instance, the Law of Contract consists of a body of rules which will determine whether a contract exist in law, what the terms of the contact are, whether the terms have been performed or discharged or whether there is a breach and the remedies available to the injured party, if any. The procedural law, on the other hand, deals with the methods of initiating proceedings to enforce certain right or duty and how the litigation or prosecution is conducted. The procedural laws are to be found mainly in the various rules of court like Criminal Procedure Act (CPA) and Criminal Procedure Code (CPC) for criminal trials in the southern and northern states respectively. There are High Court Uniform Civil Procedure Rules for various states except Lagos and the Federal Capital Territory which have their separate rules. Different states also have their Magistrate Court and Customary Courts Civil Procedures Rules.

The focus of this article is not on the substantive law but on the adjectival or procedural law. Our focus on the procedural law is also limited to an aspect of "procedure and evidence" or an aspect that deals with how litigation or prosecution is conducted. In essence, this article is constrained to addressing an issue that will only arise in the very course of proceedings in court and not an issue that will agitate at the pre or post proceeding stages. What then is the position of the Rules of adjectival law in Nigeria?

Rules of Procedure applicable in the three modes of court in Nigeria should ordinarily be informed by the distinct ideas of each of the three laws of common law, customary law and Islamic law, respectively. Thus, in a common law court, rules of procedure applicable in the court must be as provided for by the common law and not as stipulated by either customary law or Islamic law. However, this is not the practice, especially in Islamic law courts where common law still holds sway.

The legal history of Nigeria reveals that colonialism established the superiority of common law over the duos of the customary law and the Islamic law. The superiority so established has continued to wield prominence, priority and substantial preference for common law over the other two legal systems in the country. The same influence has so much imparted on the judges, parties and lawyers representing litigants as advocates before a customary or Islamic court, handling a customary or Islamic law matter, that their views, submissions and approach to determination of issues are usually informed by the common law philosophy. What is responsible for this is that by training, both academically in the University and professionally at the Nigeria Law School, Nigerian lawyers, as advocates and judges, are mostly pure products of common Law.

Very few Nigerian Legal Practitioners, as advocates before Sharia Courts, have a grasp of the unique nature of the rules and procedure applicable in Islamic Law courts and "their appearance has been of a clog in the wheel of the administration of Islamic justice; contrary to the belief that it would be lubricating oil to that wheel". They usually display their deficiency or semi-skilled training in Islamic law in their approach to how and when the issue of jurisdiction (*Wilaya*) should be raised and resolved in the Islamic law proceedings. They are often guided or rather 'misguided' by the doctrines of common law on the jurisdictional matter. The question that must be resolved is whether Islamic law permits the court and the litigants to adopt the approach by which issue of jurisdiction is resolved under the common law or

not. This is the focus of this article. The article seeks to provoke further research on this fundamental issue of procedure for a decisive position to be arrived at on how it should be approached in the Islamic Law Courts in particular and all courts in Nigeria, in general.

2. The Common Law Approach to Challenging Jurisdiction of Courts

The settled position of law generally in Nigeria is that the issue of jurisdiction is very fundamental to the dispensation of justice in any matter for adjudication before the court. The fundamental nature of the issue of jurisdiction is always re-echoed by the Supreme Court. For instance, in the case of *Oduko v. Govt. of Ebonyi State*, per Chukwumah-Eneh JSC, the apex Court succinctly re-emphasised the significance of jurisdiction to the adjudication in the following words:

Jurisdiction is the cornerstone of all litigations. It is settled law that if a court is bereft of jurisdiction to hear and determine a matter before it any steps taken in the matter is a nullity and void.

The above represents the positions of both the common law and the Islamic law on the significance of jurisdiction to the discharge of judicial responsibility by all courts in the country. However, what seems to be in controversy is the procedure to be adopted on how, when and where the issue of jurisdiction can be raised and challenged before the various courts of common law and Islamic law. In Nigeria, the jurisdiction of the common law is more popular, wider and it has a preferential influence on all the courts, including the Islamic law courts, given the common law background training of all legal practitioners. For a comprehensive appreciation of the study in this article, we will briefly explain the *how, when* and *where* jurisdiction is raised in common law courts, which of course is the predominant practice in the country.

2.1 When, Where and How to Challenge Jurisdiction in Common Law

As earlier noted, the basic settled position of the common law in Nigeria is that issue of jurisdiction gives life to the court to adjudicate on any dispute. This same basic principle also permits a party to challenge the jurisdiction at any stage of the proceedings and eve at the appeal courts. Thus, any party that realizes that the court does not have the *vires* and the power to adjudicate on a matter can bring up the issue at the very first mention of the case before the court. If the issue was not raised at the trial court, it can be raised for the first time at the appellate stage. In the case of *Owners, M/V Gongola Hope v. S. C. (Nig) Ltd*, the Supreme Court explained this position of the law when it held thus:

Issue of jurisdiction may be raised at any stage of the proceedings even at the Supreme Court and even by the court suo motu, leave may not be necessary because without the judicial competence to adjudicate everything done is a nullity.

One very unique practice in common law courts in Nigeria is that the issue of jurisdiction can be raised anyhow and in any manner. For example, the challenge can be brought up orally, by motion or in any other form that may appear just or convenient to the party raising the issue as long as it will put the court and the other party on notice about the challenge and it can be raised by the court *suo motu* (i.e. On its own accord).

Even though there is no how the issue cannot be raised in all the common law courts in the country as earlier stated, it must be noted that before the trial courts and at other stages than at the hearing stage at the appellate courts, filing of a process called the *Notice of Preliminary Objection* is the procedure which is of common use in setting the court in motion to consider a challenge to its competence and jurisdiction. The objecting party can and indeed does also come by way of *Motion on Notice*. At the appellate Supreme Court and the Court of Appeal however, any objection to the competence of the court can be incorporated into the Brief of Argument of the Objector, who is usually the Respondent. This therefore enables the court to consider both the objection and the substantive

case in the same proceeding and determine both contemporaneously.

Authorities have crystallized on the yardstick for the objector to bring up a challenge to the competence of the court. Put differently, there are settled situations or factors that can exist to justify raising a challenge to the competence of the court in Nigeria as provided by the common law. In other words, in the absence of any of the essential constituents of adjudication in any proceedings, a party can justifiably raise the issue of jurisdiction of the court. The common law position on what constitute the essential elements of adjudication, the absence of which goes to the jurisdiction of the court, was long laid down in the *locus classicus* case of *Madukolu v. Nkemdilim* and the matter was put in the following explicit words:

Put briefly, a Court is competent when:

(i) it is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or another; and

(ii) the subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction; and

(iii) the case comes before the Court initiated by due process of law and upon fulfilment of any condition precedent to the exercise of jurisdiction.

Any defect incompetence is fatal, for the proceedings are a nullity however well conducted and decided: the defect is extrinsic to the adjudication.

It is easy for the above stated approach to be adopted in raising and addressing the issue of jurisdiction in common law courts because its procedure is based on pleadings. Little wonder therefore that the law has crystallized that in resolving any issue of jurisdiction, the process which the Court will look at is the Statement of Claim of the plaintiff or the claimant and not the Statement of Defence of the defendant. In the case of *UBA Plc. v. BTL Ind. Ltd.*, the Supreme Court, per Onu JSC, as he then was and later CJN (now retired) explained the document or process which the court will consider to determine its jurisdiction in the following words:

Indeed, it is trite that jurisdiction is determined by the plaintiff's claim before the Court. See *Okoye & Ors. v. Nigerian Construction and Furniture Company Ltd (1991) 6 NWLR (Pt. 199) 301, (1991) 2 NSCC (Vol. 22) 422 at 436* where Akpata JSC pointedly laid down the position of the law to be –

'The legal position as to the competence or otherwise of the trial court to entertain case is arrived solely on the facts disclosed in the statement of claim.' See also *Aladegbemi vs Fasunmade (1988) 3 NWLR (Pt. 81) 129.* This rather ingenious, though untenable, submission cleverly ignores the law that any issue of jurisdiction is founded on the plaintiff's Statement of Claim alone, not the defendant's defence or any other process. See *M. V Scheep vs Araz (2000) 15 NWLR (Pt. 691) 662 at 668 para. H.*

2.2 The Rationale behind the Common Law Approach

There is no legal position without a purpose. The approach of the common law to challenging the jurisdiction of the court is not without its own essence. It is simply to save the court from indulging in futile exercise. Any case conducted by the court without jurisdiction is a complete nullity. More importantly, common law allows the objecting party to raise the issue of jurisdiction as soon as it is discovered to save time, cost and energy.

The above insight into the approach of the common law to raising jurisdiction of the court will enable a better appreciation of the view of the Islamic law to be explained in what follows. But before then, mention must be made of the fact that the common law approach allowing the issue of jurisdiction to be raised at any stage of the trial has the inherent disadvantage of prolonging the hearing and determination of the suit on its merit. Pedro captures this weakness when he emotionally expresses his feeling about this ugly development in the administration of justice as follows:

It is fast becoming a constant practice in civil and criminal proceedings in our courts, for the defendant or an accused person to raise a preliminary objection to the court's jurisdiction to try a case…. Incidentally the authorities direct that a preliminary objection, once raised, should be determined first before the court can take any further step in the proceedings.

What is most disturbing is that disposal of preliminary objection frequently requires time to determine. Very often, the ruling on the point is not forthcoming before six months or even a year after the commencement of the main action. A plaintiff or Defendant who is dissatisfied with the decision of the trial court on the issue of jurisdiction has the constitutional right of appeal to the Court of Appeal and thereafter to the Supreme Court. The appeal process may take between five to ten years before the preliminary issue of jurisdiction is finally resolved one way or the other… in the interim, the substantive matter or the real issue or question in controversy between the parties is relegated to the background and put on hold until the determination of the jurisdictional point.

It therefore follows that what common law seeks to prevent by allowing the issue of jurisdiction to be raised anyhow and at any time is eventually not achieved. In fact, if one weighs the need to avoid the court engaging in an exercise in futility, which informed the principle that the issue of jurisdiction must first be determined before any other thing, along with the time frame and cost involved before the issue of whether the trial court has jurisdiction or not is finally determined at the Supreme Court, one may readily come to the conclusion that the purpose of that practice is in the end completely defeated. There is therefore the need for the system to look elsewhere. An alternative seems to be in the Islamic law approach as a solution to the problem.

3. How to Challenge Court Jurisdiction in Islamic Law

There is a settled order of procedure that must be followed in the conduct, hearing and determination of cases in Islamic law courts. This order does not favour any jump of one step to another for whatever reason howsoever. The Islamic law jealously guides this order so much that it qualifies as a principle that favours the proposition that the horse should not be put before the Cart. Any decision can generally be set aside and be declared a nullity for failure to follow the necessary procedure under the Islamic law. The order can be explained as follows:

If the two opponents (i.e. the litigants) appear in court, the judge will make them sit near him side by side and he would then ask who the claimer is. And if he keeps silent until one of them starts exhibiting his case, there is no harm in that. And if the claimer or the claimant finishes stating his case and evidence, he will then ask the defendant what he has to say in response to the case of the claimant. If the defendant confirms the claim, judgment is entered for the claimant. If he denies the case, then the claimant is asked to bring up his evidence.

It is deducible from the above passage that there is a moment for the claimant/plaintiff to speak, state his case and produce his evidence just as there is a stage of the proceedings that the defendant can say and produce or bring up whatever form of evidence, whether in the form of law or fact, that he has as his defence. It should be borne in mind that a challenge to the jurisdiction of the court is a kind of defence in law that a defendant may proffer. Since the order preserved by Islamic law cannot be disrupted, it would then mean that the defendant would have to wait for his turn before raising any challenge to the jurisdiction of the court.

Following and preserving the above stated order, the position of the Islamic law is that the defendant cannot raise the issue of jurisdiction anyhow and at any point or stage as it is done under the common law. The defendant must wait until when it is his turn to do so and this is at the stage when he is putting up his own defence. He can bring up the issue as part of his defence. In the case of *Alhaji Issa Alabi vs. Alhaji Salihu Kareem,* the Sharia Court of Appeal of Kwara State, per M. A. Ambali, extensively explains this position of the Islamic law, with which the

authors are equally in agreement, albeit, with some reservations, and will be adopted in the analysis to be made hereinafter, in the following explicit words:

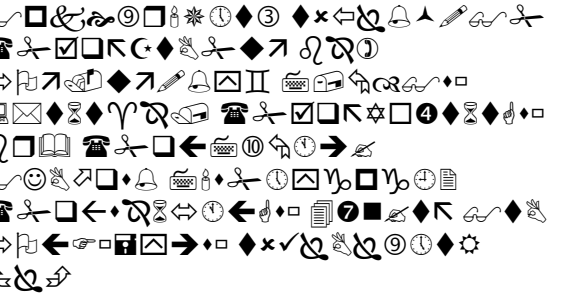
In Islamic Law preliminary objections do not find the same place of prominence as obtained in other legal systems. That is if, (sic) there is good reason for it to be entertained in the first instance.

The well-known established Islamic Law procedure states:

A judge does not make a pronouncement until he hears the statement of claim and evidence fully from the plaintiff. He then asks the defendant if he has a defence to put up.

A court of Islamic Law shall NOT adjudicate until it listens to all the complaints of the plaintiff/claimant and his/her evidence. It is after that, it asks and allows the defendant/respondent to present his defence. To talk of competence or otherwise before the complainant concludes his or her claim and proof is to cross the river before getting to it.

Interestingly, the above procedure seems to have the backing of the provision of the Qur'an, if one considers the message in the verse of the Qur'an where Allah states thus:



O ye who believe! If a wicked person comes to you with any news, ascertain the truth, lest ye harm people unwittingly and afterwards become full of repentance for what ye have done.

The instruction given in the above verse of the Qur'an, requiring the truth to be ascertained, can be inferred to mean that a plaintiff should be allowed to state his case and not just be shut out by the claim of lack of jurisdiction of the court that may be made by the defendant.

It should be stated that the jurisdiction of the Islamic law courts can be challenged on various grounds such as incompetence of the parties, of the suit itself or of the court. But all the same, the procedure stated above must still be followed and strictly adhered to. It is therefore surprising that in some instances however, especially in the Court of Appeal and the Supreme Court, the common law, rather than the Islamic law approach, has been adopted in addressing the issue of jurisdiction in Islamic law matters. Few instances will suffice to drive home this point. In the case of *GARJI VS GARJI*, while purporting to address the issue of jurisdiction in an Islamic law proceeding to which the Islamic law procedure applies, the Court of Appeal, per Adamu JCA, applied the common law reasoning to the issue and held as follows:

From the above submissions in the three briefs of the parties in this appeal, the fundamental issue of jurisdiction has been raised. It is a threshold and life-line issue which goes to the root of the competence of the court and affects its competence or power to adjudicate in the matter. Because of its fundamental importance, the issue of jurisdiction once raised (at any stage of proceeding even on appeal) should be decided one way or the other by the court before going into any other issue. Thus, it deserves priority of treatment or consideration by the court over any other issue. It is also trite that any adjudication or proceeding of any court or tribunal conducted in the absence of jurisdiction is or amounts to a nullity however well conducted it might have been.

Similarly, in the case of *MATARI VS. DANGALADIMA*, the Supreme Court applied the common law approach in addressing the issue of jurisdiction in an Islamic law suit. It held that the decision of any court reached without jurisdiction is *void ab initio* and without any effect relying on *U. A. C. Limited v. Macfoy (1961) 3 All ER 1169.*

A critical study of the above two cases reveal that the common law reasoning was applied in approaching the issue of the jurisdiction raised in the matter. It will therefore not be in tune with the interest of justice for either of the two cases and others similar to them to be relied upon as

authorities on how to approach the issue of jurisdiction in the Islamic law. Justice Adamu, in ***GARJI VS. GARJI***, as it is patent in the case, relied heavily on common law authorities in advancing his views on the issue and a further enquiry on the Islamic law case of *MATARI VS DANGALADIMA*, which his Lordship also leaned on, will show that the pronouncement relied upon in the case, was made by not only a non-Muslim Justice of the Supreme Court, but essentially by such Justice of the Supreme Court who is not learned in the Islamic law and therefore could not have presented any other view save that of the common law. This explains the reservation which must be held for cases like these when resolving the issue in the Islamic law matters. After all, Islamic law matters are *sui generis* by their nature and the superior court authorities that should be cited and relied upon must be those decided in the Islamic law proceedings and in accordance with the Islamic law and procedure and of course, by a court that is competently constituted in accordance with the principles of the Islamic law court and justice system.

It is necessary to observe at this stage that even the Sharia courts whose Judges are presumed to be learned in the Islamic law have equally fallen into the error of celebrating and advancing the common law approach to raising the issue of jurisdiction on some occasions. In the case of *FATIMA NNA KASHI & I OTHER vs. MOHAMMED TSADO,* the Kwara State Shariah Court of Appeal, sitting at its Lafiagi Judicial Division, per A. K. Imam Fulani, posited on how and when to raise the issue of jurisdiction succinctly thus:
Having heard from the two parties we realized that the appellant raised a very vital issue of jurisdiction which can be raised at any point or time in the proceedings.

Shariah courts in Nigeria have had occasions to rely on common law, whether advertently or inadvertently, in approaching the issue of jurisdiction in Islamic law proceedings. They have even posited that, just as it may be done in common law courts in the country, they too can raise and determine the issue of jurisdiction *suo motu.* In the case of *Yabagi Yandako v. Fatima Yabagi*, similar position was maintained where the Shariah Court of Appeal of Kwara State, sitting in Shaare Division, per A. A. IDRIS, held thus:
Issue of jurisdiction, being fundamental issue which goes to the root of a case and which affects the competence of the court to adjudicate in the matter before it (, sic) can be raised at any stage of proceedings and even for the first time on appeal.

Even though the courts in the above cases were sitting on the Islamic law matters, the common law had serious influence on them in the approach adopted. The Courts appeared to adopt the Common law approach hook, line and sinker. It is arguable that the influence emanated from the common law understanding of the need to avoid wasting the precious time of the court. Yet, if the time involved in listening to the case of the claimant before jurisdiction is determined is compared with the time it takes to trash the same issue on interlocutory appeals up to the supreme court is compared, the former procedure serves the cause of justice better. It is also a lesser evil preferred to be adopted when a court is faced with two evils.

Essentially therefore, it would appear, from all the analyses we have made so far, that while it is significant that the order laid down by the Islamic law be strictly followed in raising the issue of jurisdiction, there could be some slight differences in the approach to the issue at the trial Islamic law courts as against how it may be addressed at the appellate courts. We will therefore proceed to consider the differences in the following segments.

The Islamic Law Approach to Challenging Jurisdiction of the Trial Court

The starting point is to appreciate the fact that the trial Islamic law courts in Nigeria is a grass root court where the claimant presents his statement of claim orally and in most cases, such claim will become fully appreciated only after he has produced evidence in proof of his case. Without prejudice to the Islamic law proceedings' amenability to written presentation of the claimant's claim, combining the statement with the proof thereof in the open court is closer

to attaining natural justice and its quicker dispensation. This is more particularly so as claimant's claim, unlike in the common law, is not considered as evidence in its proof. More importantly, unlike in the common law determination of the appropriate parties, who is to be the claimant and defendant is the primary function of the court and always determined by the first to approach the court. To this effect, the Court of Appeal held in the case of *Hakimi Boyi Ummaru v. Aisa Bakoshi*

It is not a matter of course to say that whoever initiates or institutes an action becomes a plaintiff and the other party a defendant as obtained in the common law system. The position in Islamic law of procedure is quite unique. It may be possible that 'A' appears in court as plaintiff and 'B' as defendant. After rudimentary investigations by the trial Judge on the facts of the case 'B' the defendant, may become the claimmant/plaintiff and the initial plaintiff 'A' may turn the defendant (*Mudda 'a Alaihi*).

Therefore, where the above method, devoid of technicalities of the common law, is adopted, there is no way, and it would indeed be too premature to challenge the jurisdiction of the court before the claimant's end the presentation of his case. This is more so because, under the Islamic law, just as it obtains in common law, it is the claim of the plaintiff or the claimant that determines jurisdiction. Raising a challenge to the jurisdiction of the court at the first contact with the court cannot therefore be proper. In the case of *Olarongbe Jimoh v. Alheri Idomi,* the determinant of the jurisdiction of the Islamic law courts is explained as follows:

Regarding the determinant of jurisdiction, it is trite law that irrespective of whomsoever between the parties is adjudged as the Plaintiff under the principles of Islamic law of evidence and procedure; it is the claim - *da'wah,* in the trial court that determines the jurisdiction of both the trial and appellate courts.

It therefore follows that rather than getting immersed with the serious issue whether it has jurisdiction or not, the first task of an Islamic trial court is to determine who among the parties before it qualifies as the claimant and who qualifies as the defendant so that he may ask the claimant so discovered by it to state his claim and produce evidence in proof of the claim before it allows the defendant to proffer his defence, which may then bring up the issue of jurisdiction. To this extent, the above view of M. A. Ambali, earlier quoted and relied upon so far in this article, remains unassailable. However, the view will not be completely applicable in appellate courts. This is explained below.

How to Challenge Jurisdiction of the Appellate Islamic Law Courts

The appellate Islamic law courts in Nigeria include Shariah Court of Appeal, the Court of Appeal and the Supreme Court. This is because when either of the Court of Appeal or Supreme Court sits on the Islamic law matter, it is an appellate Islamic Court at that moment and in such proceedings. Therefore, there is the need for an understanding of what obtains in these courts in raising the issue of jurisdiction to be engendered.

It should be noted that the appellate Islamic law courts in Nigeria generally act on the Record of Proceedings coming from the lower courts, which usually emanates from the trial court, in determining the appeal before them. In the Record so produced before the appellate court and if the trial had not jumped the procedure laid down for it to be followed by the Islamic law, the appellate court will have everything it requires, including the claim of the claimant, the evidence produced in proof of the claim and even details about the parties and the composition of the trial court itself. With this therefore, there is nothing wrong for the appellate court to raise or determine, if raised, the issue of jurisdiction before determining any other issue before it, as long as the issue so raised does pertain with how the trial court conducted or determined the case. To this extent therefore, the said view of Justice Ambali, may have to be applied with some caution. It is instructive to note that where the trial court ruled, after taking the claim and evidence of the claimant, that it had jurisdiction, the proceedings would be taken to the end and the party dissatisfied with the ruling on jurisdiction would only make jurisdiction a ground of appeal. But if

the court declines jurisdiction, the claimant appeals immediately and such appeal is given priority over appeals on final decisions.

Looked from another angle, the view of Ambali may still apply as the position of the Islamic law that is equally binding on the appellate court in the circumstances where a fresh issue or an application which was not agitated upon at the trial court is brought for the determination of the appellate court. At that stage, the appellate court would not be justified to allow any objection on the ground of jurisdiction to be taken before it fully listens to the applicant to state the claim or the gist of his application. This is the kind of situation Justice Ambali found himself in proffering his view. To this end, his view still remains unassailable and will, to that extent, still have to be complied with at the appellate level.

Lessons from the Islamic Law Approach

The prime concern of Islamic law is justice. Technical or mechanical gimmicks that are very much involved in other legal systems like common law are unknown and intolerable to Islamic law. What Islamic law is interested in is justice as due and as at when due. It neither approves justice to be delayed nor encourages justice to be rushed. It strikes the necessary balance. The purpose for adopting the above stated approach to the issue of jurisdiction, especially at the trial court, is to achieve its aim of justice. The approach therefore saves time and cost, which the challenge to the jurisdiction at the beginning of the case could have brought about. Other Nigerian courts have great lessons to learn from this Islamic Law approach to the issue of courts' jurisdiction to ensure speedy attainment of justice. Dele Peters described it as one of the major causes of delay in justice administration in Nigeria thus:

Generally speaking, Rules of Court are meant, *inter alia*, to guide and give directions to both counsel and the court. They are thus intended to enhance the smooth administration of justice. However, some of these Rules of Court tend to prolong trials each time counsel resort to them. Examples of such rules include the Rules of Court which allow motions, adjournments, preliminary objections, generally as against specially endorsed writs, originating summons (before actual trial commences) and such rules regarding the interlocutory application. More often than not, when counsel/litigants resort to the use of any of these rules, trials are unduly delayed.

More importantly, the Islamic law approach very much encourages and enables the trial court to determine once and for all, the claims and defence that can be proffered in the case, so that the appellate court will be able to review them holistically in a timely manner. The Nigerian courts seem to be reasoning along this line on the issue. A look at the reactions of the Supreme Court in cases that witnessed delay on jurisdictional ground on preliminary or interlocutory issues is therefore worthwhile at this stage. The next segment therefore reviews selected cases on the judicial reaction to the common law approach.

4. Judicial Reactions to the Common Law Approach

The Justices of the Nigerian Supreme Court, who are mostly loyalists and products of the common law, have begun to express displeasure with delay resulting in the common law approach to preliminary objection on the jurisdictional ground. They share the approach of determining both the objection and the substantive matter together, as the Islamic law recommends. The Supreme Court has progressively expressed disapproval for the common law approach in many cases some of which are reviewed below.

Uzuda v. Ebigah

The Supreme Court reacted to the delay occasioned by the interlocutory application that led to the appeals in the case in the following words:

It is quite disheartening to note that this matter which was commenced in 1986 about 25 (twenty five) years ago has not even been heard on merit, let alone the trial High Court giving its decision, due mainly to interlocutory appeals which again are being remitted to the lower court for retrial. Who knows whether after the lower court might have retried and given its decision, a further appeal will again come to this court. Can this court lawfully stop further appeal to it if any of the parties is dissatisfied with the

decision of the lower court? Definitely no, since it is a right conferred by the constitution. But I would like to say, to dissipate energy on interlocutory appeals, which does not affect the right being disputed in the substantive claim for a period of 23 (twenty-three) years, which may still be elongated with this order of retrial, unless the parties have a rethink and withdraw this appeal and concentrate on the substantive matter, does not help in dispensation of justice. This, with respect, is sad.

Union Bank of Nig. Plc. v. Astra Builders (W. A) LTD.

The Supreme Court has, again, expressed displeasure at the delay of justice resulting from addressing preliminary objection while the merit of the case is jettisoned in this case. The learned justice of the apex court who delivered the lead judgement in the case, Adekeye JSC, expressed the feeling as follows:

I cannot conclude this judgment without passing a few remarks about this suit. The escapade of prosecuting the action from the trial court to the apex court on a preliminary issue, consuming a period of nine years in the process leaves a sour taste in the mouth. It is particularly a wild goose chase, and abuse of judicial process…This action is nothing but a calculated ploy to harass or frustrate the plaintiff/respondent out of the transaction. Our court shall not be a party to its process being trampled upon by any unscrupulous litigant.

Abubakar v. Chuks

This is a case where it took more than seven years before the Supreme Court finally pronounced in favour of the jurisdiction and then sent the case back to the trial court for determination on the merit. Reacting to the evil of such procedure to the justice of the case, the Supreme Court posited as follows:

Appeal on this matter was filed in the Court of Appeal on 3 March 2000. Today is 14 December 2007. It has taken more than seven years to fight the admissibility of an exhibit, an issue which could have been taken at the end of the case after the final judgment.

The above judicial reactions have shown clearly that abandoning the merit of the case for preliminary objection to the competence of the court to adjudicate on disputes is not helping the justice system in the country. However, mere expression of displeasure by the Supreme Court without proactive step in form of "judicial will" is not more than crying over a spilled milk. There is, therefore, the need for some reforms and this leads to the few steps that are suggested hereunder as proposal for reform.

5. Recommendations: Proposal for Reform

The reform proposed hereunder is a step further from the mere lamentation of the Courts and the stakeholders in the justice system on how preliminary objection to courts' jurisdiction has been abused to cause delay of justice. It requires "judicial will" from the heads of the appellate courts who have powers to amend the Rules of Court or "legislative will" from the legislature and executive to facilitate constitutional amendment or combination of both.

Adoption of Islamic Law Procedure through Review of the Rules of Courts:

It is a matter of general practice in Nigeria that preliminary objection to the jurisdiction of court can be taken at any time and the merit of the case can thus be put aside. This is the crux of the matter. It is therefore necessary for a special provision to be in the Rules of Courts for the objections to the jurisdiction of the court to be taken during the final address. It is therefore strongly recommended that the Civil Procedure Rules of all the Courts below the Supreme Court be reviewed to specifically stipulate under the Order that provides for general proceedings at the trial, as follows:

The Court shall not, where it is raised, hear and determine the issue of jurisdiction or objections on any other ground, except at or during the final address stage after the matter shall have been heard on its merit and the court shall not only make its findings on the issue of jurisdiction or the objection on whatever ground alone, but also give its decision on the substantive matter. Where the court rules that it lacks jurisdiction, it shall make its decision on the substantive case on the merit, its decision in the alternative, event that it is found by the appellate court that it has jurisdiction. This shall

be the case in all instances whether the matter is begun by writ of summons, motions, petitions or otherwise and the court shall be at liberty to hear and determine both the objections on whatever ground and the substantive suit together, where it is convenient and practicable.

It is noteworthy that a Rule of Practice as suggested above has been judicially envisaged in the case of *A. P. C. Ltd. v. NDIC (NUB) Ltd* where the Supreme Court, per Niki Tobi, pronounced to that effect, thus:
Let me take the issue on taking the merits of the matter after the Court of Appeal had decided that it had no jurisdiction to hear the appeal. Normally, where a court of law lacks jurisdiction to hear a matter and comes to that decision, the court has nothing to do with the merits of the matter because the exercise will be in futility. However, courts below the Supreme Court will not be wrong to take the merits of the matter in the alternative. The exercise is useful and becomes very handy in the event that the court wrongly ruled that it had jurisdiction. This helps in no little way in saving litigation period. Instead of sending the case back to the court to hear the matter because it has jurisdiction, a decision in the alternative will stop such a procedure.

Vesting Final Jurisdiction in Interlocutory Appeals in the Court of Appeal.
If the option of not taking any objection to the jurisdiction of the court seems not visible because of the fear that the court should not engage in a futile exercise, another visible alternative is for the law to be made vesting final jurisdiction in the Court of Appeal in all appeals against preliminary matters or interlocutory issues, including the challenge to the jurisdiction. This has also been the long expected justice reform advocated by the Supreme Court. Not surprising therefore, the apex court advocated for this reform in the following words:
In order to save litigation time and money of litigants, it is my view that all interlocutory appeal must stop at the Court of Appeal.

It should be noted that a choice of this option would require amendment of section 240 of the Constitution. The desired amendment should particularly necessitate a new subsection (2) to the section while the existing lone section 240 is renumbered as sub-section (1) of the section. The new (proposed) section 240 (2) may be drafted to read as follows:
240 ... (2) In exercise of the jurisdiction conferred on the Court in sub-section (1) of this section above, the decisions of the Court of Appeal, in respect of appeals coming before it on interlocutory applications or matters, including all preliminary objections or a challenge to the jurisdiction of the lower court or a trial court of first instance where the appeal comes from the Appellate Session of the court below, shall be final and no further appeal shall lie to the Supreme Court in respect thereof.

The Supreme Court also shares the view that there would be need for constitutional amendment before the option of vesting final jurisdiction in the Court of Appeal can be legally effective. To this end, the court has advocated for this reform in a sort of appealing tone thus:
I will join my learned brother in calling on all the authorities and all the stakeholders vested with the powers to make laws and to amend the Constitution to, as a matter of urgency put in place machinery to amend the Constitution to this effect so that our justice delivery system could be reformed to see to the quick dispensation of justice without any interlocutory appeal constituting obstacle.

Setting Time-Frame for the Determination of Appeals on Jurisdictional Ground:
It is quite appreciable that jurisdiction is very indispensable for the court to validly adjudicate on any matter. However, the much preferential safeguard and treatment seems to be only to the benefit of the law while the interest of justice is not in any way protected thereby. Question may be asked: what interested is protected through the jealous guard of the jurisdiction of the court? Jurisdiction of the court is guarded to ensure that the court does not adjudicate upon matters in which jurisdiction is not conferred on it. Certainly, it is only the interest of the law that is protected here not of justice. It is in view of this that it is suggested that time frame is fixed, within which the appellate courts involved shall

dispose of jurisdictional appeal. This is no longer new to the Nigerian justice system. It is therefore recommended that a new (proposed) sub-section (7) should be inserted in section 294 of the Constitution to read as follows:
294- … (7) In an interlocutory application bothering on preliminary objection or jurisdictional matter, before any court sitting in the appellate jurisdiction, the court in such cases at any stage or court level shall deliver is decision within sixty (60) days of the filing of the appeal.

Prospects from the Theory of FiFoJ:
The trend in the Nigerian appellate justice system is that the Supreme Court would not ordinarily set aside concurrent judgements of the lower court on an issue except it is shown that the concurrent decisions are perverse. This has become so settled that it can almost be predicted with some sort of mathematical precision that an appellant appealing against such decisions would fail. It is now even provided in the Supreme Court Rules that where an Appellant requires leave to appeal against such decisions, the leave would only be granted in exceptional circumstances. This judicial wisdom is therefore invoked to formulating a theory that can address delay on jurisdictional ground in the Nigerian courts. This theory is proposed to be called "Theory FifoJ".

The theory simply states that in a situation where the trial court rules that it has jurisdiction, after its jurisdiction was challenged, and such decision is affirmed by the Court of Appeal (back to back), the decision of the Court of Appeal shall be final, i.e. "Finality in Favour of Jurisdiction (FiFoJ)".
The other hypotheses of the Theory would mean that if the Court of Appeal rules that the trial court does not have jurisdiction contrary to the finding of the trail court, appeal should lie further to the Supreme Court and the apex court should, in the circumstance, be time –bound, as earlier proffered.

6. Conclusions

This article has examined the length and breadth of how to raise the issue of jurisdiction in the Islamic law. It has been demonstrated that the Islamic law provides an avenue for its courts to take the issue of jurisdiction along with the determination of the case on the merit. The study also revealed that, with this approach, the Islamic law is able to strike a balance in ensuring that justice is neither delayed nor rushed. The article therefore challenged the courts in Nigeria on the unnecessary delay and longevity in the litigation period that is usually brought about by the issue of objection to courts' jurisdiction.

No court of law will be able to discharge its responsibility of justice dispensation to the litigants if it cannot ensure that justice is neither rushed nor delayed. The practice of raising objection to jurisdiction separately and determining same before any other thing, at the expense of determining the case on its merit, which is in vogue in the Nigeria courts, has been shown in this article to be detrimental to the cause of justice. The ideal practice of justice which must be advanced and observed by any court is for justice to be dispensed timeously, without being rushed nor delayed. The golden principle of justice dispensation cannot be validly and justifiably sacrificed for the mere need to ensure that courts do not engage in efforts in futility or in advancing compliance with the law on jurisdiction. If a case is determined on its merit and the court eventually found that the matter was frivolous, unwarranted and completely uncalled for in the first place, such court cannot be said to have engaged in efforts in futility. Thus, it is rather a mere misconception to say that simply because a court may eventually be found to lack jurisdiction, its efforts on determining a case on its merit without first taking the issue of jurisdiction amount to exercise in futility.

The conclusion therefore is that the Islamic law Rules and Procedure for challenging the jurisdiction of courts, which we have analysed in this article, is a worthy model and approach which ought to be adopted by all courts in Nigeria. The benefits of this to the courts, the parties and the society at large are unquantifiable. As observed by Justice Niki Tobi, "the exercise is useful and becomes very handy in the event that the court wrongly ruled

that it had jurisdiction. This helps in no little way in saving litigation period. Instead of sending the case back to the court to hear the matter because it has jurisdiction, a decision in the alternative will stop such a procedure."

In concluding, some prospects for reform in addressing the problem of delay on jurisdictional ground in courts in the country have been advanced. The reform would require amendment of Rules of appellate court to adopt the Islamic approach. Amendment to sections 240 and 294 of the Constitution was also proposed to make the Court of Appeal the final court on interlocutory matter and setting time-frame for determining appeals on jurisdictional issue and other interlocutory matters with draft proposal. It is also proposed that through the theory of FiFoJ, the problem can be effectively addressed. One thing thus remains clear, and that is, in addressing delay on jurisdictional ground in courts in Nigeria, there are lessons to be learnt from the Islamic Law and there are practical prospects for reform. Giving the recommendations made above a trial is therefore most desirable and they remain handy for engendering a time and cost effective justice system in the country.

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