

***Kano State vs. Lami Adamu (2010), HC Kano State, unreported, Suit No. K/42C/2010***<sup>1</sup>

[Ed. note: issue decided: Whether the High Court of Kano State could apply the state's Sharia Penal Code Law. Holding: it could.

This issue arose from the decision of Kano State's Attorney General to charge the defendant, in the High Court, but under the state's Sharia Penal Code. Normally the Sharia Penal Codes have been applied exclusively in the Sharia Courts, while in the Magistrate and High Courts the old Penal Codes, dating from 1960 and still in effect in all sharia states, are applied. In this case the Attorney-General of Kano State chose to charge the defendant under the state's Sharia Penal Code, but in the High Court. The High Court held that this was proper and that it could apply the Sharia Penal Code. This is the only case in which this is known to have happened.]

IN THE HIGH COURT OF JUSTICE OF KANO STATE OF NIGERIA  
IN THE HIGH COURT OF KANO JUDICIAL DIVISION  
HOLDEN AT KANO  
Suit No K/42C/2010

Before: -Hon. Justice Shehu Atiku ----- Chief Judge

Dated: - 20<sup>th</sup> day of April, 2010

Between: -

Kano State -----

Complainant

and

Lami Adamu -----

Respondent

**RULING**

On 05/03/10, the Hon. Attorney General of Kano State filed a charge against one Lami Adamu (F) of Turmusa village in Sumaila Local Government Area of Kano State.

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In this charge the said Lami Adamu is being accused of committing the offence of intentional culpable homicide contrary to S. 143(a) of the Kano State Sharia Penal Code Law 2000 in that she is alleged to have stabbed one Abdullahi Wawu at Turmusawa Village with a broken bottle as a result of which the victim i.e. Abdullahi Wawu lost his life.

Under S. 143(a) of the Sharia Penal Code (SPC) this offence is called Qatl-al-amd and if this accused is found guilty, the punishment is nothing but death sentence....<sup>2</sup>

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<sup>1</sup> Scan of certified true copy of the ruling in the possession of the editor.

<sup>2</sup> There is no defence of provocation under the Sharia Penal Codes, see *Sourcebook*, IV, 11-12. Whether this is why the Attorney-General chose to charge the defendant under the Sharia Penal Code is not known.

Then on 30/03/10, the Hon. Attorney General made a move before this court to move his application to prefer a charge against the accused for trial of the said accused (Lami Adamu) under the (SPC) for intentional homicide under S/ 143(a) of the (SPC).

However, Mr. Ishola the Legal Aid counsel and who is acting as a defence counsel for the accused raised an objection against the application...to prefer a charge against the accused for trial before this court.

The main contention of Mr. Ishola, learned defence counsel is that [the defendant could not be tried under the Sharia Penal Code in the High Court, that the High Court should dismiss the case, and that the Attorney General should be required to refile it in a Sharia Court if he wished to charge it under the Sharia Penal Code].

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[T]he [1999 Constitution of the Federal Republic of Nigeria] in S. 272(1) gives the High Court an unlimited jurisdiction. Section 272(1) provides:

Subject to the provisions of section 251 and other provisions of this Constitution, the High Court of a State shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.

Also, under the provisions of the Kano State High Court Law (Cap 57) Laws of Kano State 1991, the High Court is obligated to observe and enforce the observance of customary law which is not repugnant to natural justice, equity and good conscience. This is spelt out in S. 34 of the High Court Law...which reads:

34(1) The High Court shall observe and enforce the observance of customary law which is not repugnant to natural justice, equity, and good conscience, nor incompatible either directly or by implication with any law for the time being in force, and nothing in this law shall deprive any person of the benefit of any such customary law.

Looking at the charge against the accused, it is for an offence of intentional homicide under S. 143(a) of the (SPC) and such an offence under the Penal Code (S. 221) is exclusively triable by a High Court.

Moreover, the SPC is a law promulgated by the Kano State House of Assembly and S. 211 of the Constitution empowers the Hon. Attorney General of Kano State to institute and undertake criminal proceedings against any person before any court of law in Nigeria other than a court martial in respect of any offence created by or under any law of the House of Assembly. S. 211(1) of the Constitution says:

The Attorney General of a State shall have power –

- a) To institute and undertake criminal proceedings against any person before any court of law in Nigeria other than a court martial in respect of any offence created by or under any law of the House of Assembly.
- b) To take over and continue any such criminal proceeding that may have been instituted by any other authority or person; and

- c) To discontinue at any state before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.

So, having regard to the foregoing reasons, this case, instead of striking it out and thereby allowing this accused to go back to her village scot-free, will be transferred to any judge of the High Court, Kano, who is knowledgeable in Sharia and who is even fit and proper to be a Kadi of the Sharia Court of Appeal in line with the provisions of S. 276(2) and (3) of the 1999 Constitution....

Signed, HON. CHIEF JUDGE, 20/04/10

Court Registrar's Comment

As a result of the above ruling the case was eventually transferred to High Court No. 8 on 22<sup>nd</sup> day of April, 2010, presided over by Hon. Justice Nuhu Yahaya Galadanchi. He is one of the early students of faculty of law, Bayero University Kano, who graduated with LL.B. Sharia. Though he is a High Court Judge he is knowledgeable in Sharia, in that, his classmates are now sitting as Sharia Court judges in different States in the Federation.

(Signed)  
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(Barrister Fauziyya Isa Sheshe)