The Use of Alternative Dispute Resolution (Sulh) in Sharia Cases

Being a paper presented by:

Hon. Justice Idris Abdullahi Haroon, FHNR
Hon. Grand Kadi (RTD),
Kwara State Sharia Court of Appeal, Ilorin
ia.haroon@yahoo.com

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**INTRODUCTION**

Disputes and disagreements have been as old as man himself right from his creation by the Almighty God. This is due to the complexity of the nature of man. It is often said that no man is an island; instinctively, man must interact, stay and reason together though in different ways, manners and approaches. The imperative intermingling of man and their interaction among themselves makes dispute and disagreement inevitably inseparable parts of life.

Dispute may occur between individuals of the same family, tribes and communities of the same country, sovereign nations, corporate bodies, institutions, political parties, religious bodies and so on and so forth. It is a common phenomenon in countries such as ours with cultural, lingual and religious diversities. Dispute, if not quickly managed by settlement often result into bloody clashes and wars of which consequences are bitterly painful, regrettable and of adverse results with irreparable damages and hardships. In order to checkmate disputes in whatever form; individual, societal, tribal, political, commercial, environmental, local or international, there must be a thoughtful and well researched approach to bring about peace and resolution between the disputing and warring parties, communities...
or nations. This is the primary goal and objective of Alternative Dispute Resolution.

WHAT IS ADR?

Alternative Dispute Resolution (ADR), also known as external dispute resolution in some quarters, is a dispute solution process and technique that acts as means for the disagreeing parties to come to an agreement short of litigation.\(^1\) It is a collective term for ways through which conflicting parties can settle disputes with (or without) a third party. It is intended to serve as an alternative to the conventional court processes. The rising popularity of ADR in the modern days can be explained by the increasing case loads and delays in the traditional courts; the perception that ADR imposes fewer costs and lesser time than litigation, a preference and desire of the parties to have inputs in choosing individuals who will join them to decide their disputes.\(^2\) Alternative Dispute Resolution has gained a widespread acceptance among the general public and the legal profession in the recent years. The main components of ADR are: Arbitration, Mediation, Conciliation and Negotiation.

ALTERNATIVE DISPUTE RESOLUTION (ADR) IN THE CONTEXT OF ISLAMIC LAW

It is interesting to note that ADR is not alien to Islamic law, though ordinarily one will ask what Islamic law has gotten to do with ADR. This kind of conclusion or notion is reached because of lack of understanding of the Islamic law and what it’s all about.

The comprehensiveness of the Islamic law, otherwise known as *ash-shari’ah*, as a universal and an accomplished law needs no emphasis. This is evident from the fact that, Islam for decades before the modern civilisation brought about by Europe was the torchbearer of learning, sciences and scholarship. It was an acclaimed system of religion, governance, politics, economics and adjudication. *Shari’ah* law which derives its origin from the divine message revealed to mankind through the noble Prophet Muhammad (PBOH) is universal in character as it leaves no aspects of life and man without given adequate attention. The Supreme Court of Nigeria declared in the case of *Alkamawa Vs Bello* as thus:

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\(^1\) Totaro, Gianna (Nov.14, 2008), “*Avoid Court at all costs*”, the Australian Financial Review, (April 19, 2010)  
Islamic law is not same as customary law as it does not belong to any particular tribe. It is a complete system of universal law, more certain and more permanent and universal than English Common Law.

It is apposite to also make reference to the submission of a highly respected friend; Professor Stefan Reichmuth (Professor of Islamic and Oriental Studies at the University of Bochum, Germany):

*With the advent of Islam, a new culture emerged absorbing and reconstructing the Hellenistic as well as the Indian and Iranian cultural elements before it was handed to the Western New World via Spain.*

**ORIGIN**

Alternative Dispute Resolution in Islamic legal system is simply known as *as-Sulh*. It is a popular aspect of Islamic legal system which derives its origin like other Islamic principles of law from the Qur’an and supplemented by the hadith; traditions of the Prophet and *Ijma*; the consensus of Muslim jurists.

*Sulh* was first practised by the Prophet (PBOH) and his early disciples upon whom be peace of Allah during the incident which occurred at a place between Makkah and Madinah called *al-Hudaybiyyah*. This was when the Prophet (PBOH) wanted to perform lesser hajj (*umrah*) after he had been forced out of Makkah and migrated to Madinah. The incident took place towards the end of the sixth year of the hijrah; the Prophet left Madinah with a party consisted of about 1400-1500 men. On hearing of the Prophet’s approach, the Makkans decided to oppose the entry of the pilgrims by a strong force of arms under the leadership of Khalid bn. Walid (who embraced Islam less than two years after). When Prophet Muhammad (PBOH) became aware of this, he turned back and settled at a place known as *al-Hudaybiyyah*. When the representatives of the Makkah oligarchy met with the Muslims and they both decided to conclude the truce, a treaty was drawn that all warfare between Makkah and Madinah be suspended for 10 years; that no entrance to Makkah by any of the disciples of the Prophet for that year; that any Makkah citizen who come over to the Prophet must be sent back to Makkah, but if the person is from the side of the Prophet, such a person will not be sent back. Though, this last stipulation was very disadvantageous to the Muslims, the Prophet still agreed to it in pursuance of the principle enjoined by Allah that:

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4 Stefan Reichmuth, Jorn Rusen, Aladdin Sarhan (eds.) (2012), *Humanism and Muslim Culture: Historical Heritage and Contemporary Challenges*, p.39, National Taiwan University Press, Taipei, Taiwan.
“there shall be no coercion in matters of faith” (Q2:256).

This truce of Ḥudaybiyyah became a great event of history in the life of Islam. Peace and tranquillity flourished for the first time between Makkah and Madinah; Islamic ideas perpetrated the Arabian Peninsula springing up unity between the communities which later prepared for the triumph of Islam and the entrance of the Prophet to the city of Makkah the following year on pilgrimage with his disciples without any hostility or resistance. The truce ushered in the moral and political victory of Islam over all the Arabia. It could be concluded from the above event that sulh (peace-making) under Islamic law, for the purpose of terminating disputes or conflicts is as old as the Islamic religion or Shari’ah. It is to be noted that sulh in Islamic law was practised and implemented towards the sixth year of the hijrah calendar which is now 1438 years; whereas, it was only in 1945 that the United Nations established what we are now celebrating as Alternative Dispute Resolution.

**ADR PROCESSES IN ISLAMIC LAW AND ITS ADVANTAGES**

Islamic law contains the following processes as means of conciliation:

I. **Sulh**: Negotiation, mediation/Conciliation, Compromise of action
II. **Tahkim**: Arbitration
III. **Muhtasib**: Ombudsman
IV. **Fatawa of Mufti**: Expert Determination

**i. SULH: NEGOTIATION, MEDIATION/CONCILIATION**

The concept of Sulh in the Shariah means a contract that is concluded by two parties, under which each party waives part of his right for the purpose of reaching a mutual and final resolution of a conflict. Hence, in legal sense, sulh is a settlement grounded upon compromise negotiated by the disputants themselves or with the help of a third party.

Sulh represents one of the methods of conflict resolution in the Islamic legal system and it is attained through mediation and conciliation which may be facilitated by either a Qadi or prominent members of the family or community. However, it involves the principles of counselling, advising and arbitration.

The basis of sulh is sourced to many verses of the Holy Qur’an thus:

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The believers are but a single brotherhood, so make peace and conciliation between two (contending) brothers, and fear Allah, that ye may receive mercy.\(^6\)

If two parties among the believers fall into a quarrel, make ye peace between...with justice and fair, for Allah loves those who are fair and just.\(^7\)

The two verses strongly advocate amicable settlement of dispute on equitable and fair manner, and God promises a divine reward for those who do so. There is another verse where undue secrecy which is otherwise disapproved is being condoned by Allah for the sake of conciliation; it reads thus:

In most of their (people’s) secret confabulation there is no good; but if one exhorts to a deed of charity or conciliation (sulh) between men (secrecy is permissible). To him who does this seeking the good pleasure of Allah shall soon be given a reward of the highest value.\(^8\)

The Prophet, in support of the above verse was reported to have said thus:

He who makes peace (sulh) between the people by inventing good information or saying good things (in his attempt to please the disputants) is not a liar.\(^9\)

Reconciliation between the conflicting parties can cause postponement of salat which is timely obligatory. This shows the importance attached by Islamic law to conflict resolution and dispute settlement. The Prophet explains the rewards awaiting the promoters of dispute resolution or settlement saying:

\(^6\) Q49:10  
\(^7\) Q49:9  
\(^8\) Q4:114  
\(^9\) Muhammad Muhsin Khan; *Sahih al-Bukhari (English Translation)*, Vol.3, pg.533, Beirut
There is a sadaqah (charity) to be given for every joint of human or body (which numbers 360) and for everyday in which the sun rises there is a reward for the one who establishes reconciliation and justice among people.\textsuperscript{10}

The Prophet also gave preference to dispute resolution over prayer (\textit{salat}), sadaqah and zakah (charity and almsgiving) and fasting. He says:

\begin{quote}
ألا أخبركم بأفضل من درجة الصيام و الصلاة والصدقة? قالوا: بلى، قال: صلاح ذات البين، فإن فساد ذات البين هي الحائفة
\end{quote}

Shall I inform you of a deed more rewarding than fasting, prayer and charity? It is the act of settlement between people, for bad relationships and disputes are like a razor (which can eliminate a community).\textsuperscript{11}

The Prophet upheld the cause of \textit{sulh} at a very difficult situation even when derogatory reactions were made against his noble personality and his mission. It is reported thus:

\begin{quote}
When Allah’s apostle concluded the peace treaty of Hudaybiyyah, Ali bn Abi Talib was to put it into writing; at the opening chapter of the document, he wrote: “between Muhammad; Allah’s messenger…” the non-Muslims objected that part claiming if he (the Prophet) is an apostle of Allah they would not fight with him. Allah’s messenger asked Ali to delete that statement while Ali declined saying that he will not be the one to rub it off. The Prophet (PBOH) rose and rubbed it off in the interest of peace and settlement.\textsuperscript{12}
\end{quote}

Another evidence of the historic significance Islam attaches to settlement of conflicts and disputes is what was documented in the famous letter of Umar bn Al-Khattab (the Second Caliph of the Prophet) to Abu Musa al-Ash’ariy on the latter’s appointment as a \textit{qadi} (judge) which contains numerous injunctions relating to the administration of justice. One of these deals with \textit{sulh}:

\begin{flushright}
\textit{Ibid}, p.536
\end{flushright}

\begin{flushright}
\textit{Tafsir Sa’dy}, Vol.1, p.202
\end{flushright}

\begin{flushright}
\textit{Ibid}, Vol.3, pg.533
\end{flushright}
All types of compromise and conciliation among Muslims are permissible except those which make haram (unlawful) halal (lawful) and halal (lawful) haram (unlawful).\textsuperscript{13}

\section*{ii. \textit{TAHKIM: ARBITRATION}}

In pre-Islamic Arabia, the concept of \textit{tahkim} (arbitration) was known and it was practised to settle various types of civil and commercial disputes. After the advent of Islam, arbitration was given approval in the Qur’an as exhibited in some of its verses dealing with \textit{tahkim}:

\begin{quote}
\textit{If ye fear a breach between them (i.e. husband & wife), appoint (two) arbiters, one from his family and the other from hers; if they wish for peace, Allah will cause their conciliation: for Allah hath full knowledge, and is acquainted with all things.}\textsuperscript{14}
\end{quote}

The Prophet recognised arbitration. In one reported case, he appointed an arbitrator and also advised the tribe of Bani Qarnata to have a dispute arbitrated.\textsuperscript{15}

However, an arbitrator must have such qualifications i.e. knowledge, honesty, fear of Allah and competency required for the discharge of his responsibilities.

\section*{iii. \textit{MUHTASIB: OMBUDSMAN}}

The institution of ombudsman or commissioner of public complaints has now become an indispensable tool of government in many countries. The institution of ombudsman emerged in its present form in Sweden in1809. England had its first ombudsman under the Parliamentary Commissioner Act, 1967. He adjudicates between a private person and any governmental or statutory agency. Now, as ADR includes such alternative processes which settle civil disputes out of court, the institution of Ombudsman is naturally included within ADR. In Islamic Law, \textit{muhtasib} is equivalent to ombudsman. His functions include account taking (\textit{hisbah}) of such matters like weight and measures, quality of commodities on sale in markets, honesty in trade and commerce, observance of modesty in public places, and such other things both temporal and spiritual, that is, his functions are dispute avoidance and dispute resolution, and also to maintain morals.

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\textsuperscript{13} Journal of Asiatic Society 307 at pp.311-312; A.A. Fayzee, \textit{Modern Approaches to Islam}, pp.41-46
\textsuperscript{14} Q4:35
\textsuperscript{15} El-Ahdab, A.H., \textit{Arbitration With the Arab Countries} (2\textsuperscript{nd} ed., Kluwer Law International, The Hague, 1999), p.17
\end{flushleft}
The institution of *muhtasib* is as old as Islam itself, and owes its origin to various verses of the Qur’an. One of such verses is:

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\text{Let there arise out of you, a band of people enjoining what is right, forbidding what is wrong and believing in Allah}^{16}.
\]

The Prophet himself appointed Sa’ad ibn Al’As Ibn Umayyah as *muhtasib* of Makkah and Umar bn al-Khattab as that of Madinah. Abdullah bn Utbah al-Mas’ud was the *muhtasib* of Madinah during the reign of Umar bn al-Khattab. According to Ibn Taymiyyah, duties of *muhtasib* cover areas not covered by *Qadi* or governor.\(^{17}\) This generally related to the Qur’anic duty of ‘enjoining the good and forbidding the evil’. To do this he is empowered to lay down rules to regulate different activities falling within his jurisdiction and duties.\(^{18}\)

The office of *muhtasib* is a useful institution in dispute resolution and dispute avoidance. The powers vested in him are wider than those enjoyed by Ombudsman in the western countries extending to temporal as well as spiritual matters.

Most of the causes and sources that adversely influence the attitude of our people particularly could find remedy in this ADR process; *hisbah* and thus bring about sanity in the market, schools and the society at large.

### iv. **FATAWA OF MUFTI: EXPERT DETERMINATION**

‘Expert determination’ is the process where the parties to a dispute entrust it to some experts for evaluation in view of the technical nature of the dispute. The ‘evaluation’ or ‘verdict’ given by the expert is only of persuasive value, not binding.\(^{19}\)

*Fatawa* are non-binding evaluative opinions given by a *mufti* to an individual questioner (*mustafti*), generally in connection with an actual dispute, when the questioner is unsure in which way to tackle the matter.

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\(^{16}\) Q3:104

\(^{17}\) Ibn Taymiyyah, *Al-Hisbah fi al-Islam wa Wazifat al-Hukkam al-Islamiyyah*, p.10 (Medina University, n.d.)


In countries/states where there are no Shari’ah Courts and qadis to decide a dispute among Muslims in accordance with the Islamic law provisions, the institution of ifta’ assumes much importance.

Advantages of Sulh in Islamic Law Cases over strict litigation

The numerous advantages, benefits and usefulness of Sulh can be implied from the various meanings and descriptions attributed to it by scholars. Some of these descriptions will be stated before enumerating its advantages.

Al-Alusi opines that: the aim of Sulh is to bring about love between parties who are in dispute without sacrificing the limits of Islamic law.

The Author of ‘Ar-rawdul-Murbii’ is also of the view that: Sulh is the medium with which an amicable and peaceful resolution is aimed at between two disputants.

1. Sulhu brings about love, mutuality and oneness: unlike strict litigation wherein the parties at dispute will come to court purposely to avenge or get is right enforced. Sulhu on the other hand focuses on putting the disputes at hand and conflicts in mind aside and bring about a balanced settlement and conclusion favoring the two sides; this can be seen from the cases cited above. While litigation aims at restitution of rights Sulhu focuses on the strengthening of cordiality. Sayyidna ‘Umar (RDA) one of the greatest judges in the history of Islam pointed this out in one of his sayings where he said: ‘Settle disputes by resolution (Sulh) because litigation inherits enmity”.

2. Sulhu is safer than Adjudication both for the judges and litigants: adjudication is a very cumbersome and delicate duty which must be carried out with utmost care and dedication, the prophet SAW pointed out how delicate adjudication is in one of his Hadith that: “Anyone who is made a judge has surely been slaughtered without a knife”.

This is because while performing the sacred duty of adjudication
judges must be extra careful to fulfill all righteousness so that they belong to the class of judges that will be dwellers of Paradise and not the two others has described in the prophetic tradition. However such strenuous requirements are not required for Sulh, the basic component of sulh is a good intention and knowledge of Islamic laws that can serve as guidance while carrying it out; in fact some sins like falsehood are exonerated if their purpose is to achieve sulh, as in the case of falsehood as seen in the Hadith referenced above. Also in Sulhu it is guaranteed that the mediator or conciliator will be rewarded if he aims resolution of the disputes between the parties, however judges on the other hand will only be rewarded if the adjudication is based on truth, fairness, knowledge and Fear of Allah.

3. Sulhu is more rewarding than adjudication based on strict legal rights:
Settling disputes amicably (Sulh) has been described as one of the most rewarding acts according to textual authorities. The prophet was reported to have said that:

*The best conducts of any mankind are Solaat, Resolving disputes (Sulh), and Good manners.*

4. Sulhu saves time: unlike litigation wherein certain practices and procedures must be followed, in such the resolution is quick and timely.

Sulhu enhances and restores cordiality, mutuality and forbearance among disputants which ensure coherence among the Muslim Ummah, not only parties to the dispute feel relieved and delighted but also all those who participated in the process which eventually led to the amicable settlement.

Goals that have been articulated for the civil ADR programs usually include some version of the following: cost saving for parties and the courts; earlier resolution of disputes; more satisfying procedures for dispute resolution; outcomes that reflect the parties’ interests and values; litigant satisfaction and compliance with results; ensuring the public’s access to justice; reducing backlogs and freeing up judicial resources.

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20 Silsilatul Ahaddeth Soheehah. 1448
21 Nancy Welsh, Making Deals in Court-Connected Mediation; What’s Justice Got to Do With It?, 79 Was. U. I.Q. 787 (2001)
Essential Elements of Sulh

Sulh as a contract has certain essential elements that together make up a valid Sulh agreement under Islamic law. The following are the essentials of Sulh agreement:

a. Al-Musalihi Lahu (one who makes a declaration of claim)
b. Al-Musalihi Alaihi (one against whom the claim is declared)
c. Al-Musalihi Anhu (Subject-matter in respect of which the claim is lodged)
d. Al-Musalihi Bihi/Badl al-Sulh (the object offered for the Sulh/Consideration)
e. Al-ijab (offer)
f. Al-Qabul (acceptance)

a. Al-Musalihi Lahu and Al-Musalihi Alaihi: the two conflicting parties (al-Masalihi) should be persons who possess the legal capacity to surrender their rights, donate or make a gift and not otherwise. In accordance with the principle, an insane, a minor, a guardian over orphan’s property, an administrator over endowment funds (waqf), Shall have no legal capacity to validly dispose under Islamic law.

b. Al- Musalihi Anhu (Subject matter of Dispute): the subject matter of Sulh should be property (maal) of value. The subject matter of sulh may emanate from dispute over anything lawful- be it dispute involving monetary claims, property, issues concerning marriage and divorce and lots of civil cases to the exclusion of Hudud cases

c. Al-Musalihi Bihi (Consideration): this is the object or thing tangible or otherwise upon which the parties to the Sulh agree to be given as consideration in place of the right forgone by way of sulh. It must be Halaal, valuable and beneficial.

d. AL-Ijab and Al-Qubul (Offer and acceptance): Like any other contract under Islamic law, offer and acceptance are essential ingredients of Sulh. The offer as well as the acceptance may be conveyed in any expression that clearly illustrates the mutual consensus of the parties.
CIRCUMSTANCES UNDER WHICH SULH (CONFLICT RESOLUTION/DISPUTE SETTLEMENT) IS RECOMMENDED

Islamic law, in its wisdom, made provisions for the circumstances under which sulh is applicable as a legal procedure. A judge, before whom a case is presented, may advise the parties to incline to ADR in any of the following situations or related matters:

i. Where the case is complicated due to legal issues or intrigues involved therein.

ii. Where the litigation is such that may likely strain blood relationship among disputants tied by kinship. Caliph Umar bn. Al-Khattab was reported to have said that: “avoid litigation among people tied by kinship. Litigation among them causes animosity”. This goes with the Yoruba adage that says “no friendship after litigation”. If one or both of the litigants accept the advice to opt for peacemaking, then fine and good. Where, however, both of the litigants or one of them rejects the settlement of their dispute through peace-making, then the judge has no alternative than to continue with the litigation up to the point of delivering judgment.

iii. Where each of the parties to litigation is able to present his evidence but the evidence so presented are on equal weight or strength when put on a scale of justice, both appeared to be same in terms of proving claim and denial, then the judge may result to such settlement out of court.

iv. Where the parties to litigation happen to be influential, sulh is advised to avoid breach of peace.

v. He may also advise the parties on sulh where the litigants happen to be learned and respected men in the locality with large followers.

vi. Finally, where the litigants who appear before the judge consist of an influential and a weak litigant who may not be able to derive the fruit of the judgment due to the influence of the other party, the judge may advise on
peace-making but on the condition that the judge does not appreciate the nature of litigation or that the two parties consent to making peace.

It must be pointed out that even though Shari’ah recommends and encourages parties to resort to sulh, it is however prohibited for the judge to force one or both of the parties to submit to sulh against their will or the will of anyone of them. He should not persist on it unless with the agreement from both sides.22

**Sulh and its applicability in Sharia Courts and Area Courts**

This work shall adopt Katsina State as a case study. For the purpose of clarity, Katsina State is one of the 36 states of the Federal Republic of Nigeria wherein the practice of Islamic law is operative and well-grounded. The Katsina State Judiciary akin to some northern states presently consists of two types of courts, one is common law based and the other is Islamic law based. The constitutionally recognized courts in Nigeria can also be classified in such manner, while the High courts mainly administer Common law, the Shari'a Courts of Appeal administers some aspects of Islamic law and the Customary Court of Appeal administers customary law.

It is worthwhile to reiterate that Islamic law is an independent legal system in Nigeria, distinct in body, structure and source from any other law, the term ‘Sharia Court’ refers to Islamic law based courts, their organizational structure exists in hierarchy, in Katsina State the Courts that administer Islamic law matters are; Sharia Court, Upper Sharia Court and Sharia court of Appeal this is similar to most other states wherein there are Area court, Upper area court and Sharia Court of Appeal.

While the Sharia Court/Area Court, Upper Sharia Court/Upper Area Court exist as lower courts and are established by statutes the Sharia Court of Appeal is a

creation of the constitution and maintains the position of a superior court of record. 

The Sharia courts in Katsina State like most other states where these courts operate, e.g. Kwara State adopts the Maliki School of jurisprudence to the extent that inference and reference will only be made from other schools in instances when the Maliki school is silent or seems insufficient on the subject matter to be adjudicated upon. To this end Sharia courts administer civil cases, criminal cases (in some instances), and also it gives room to the institution of Sulh as provided for by the Maliki jurists in their works.

The practice of Sulhu is placed on the provisions of Order 12 Rule 1 of the Katsina State Sharia Court of Appeal which states:

‘’ A court may, with the consent of the parties to any proceedings, order the proceedings to be referred for arbitration to such person or persons and in such manner and on such terms as it thinks is just and reasonable’’

As pointed above, the above section serves as the legal basis for Sharia Courts on the application of Sulh (amicable settlement) also it indicates that party are at liberty to have their disputes referred by the court to a professional arbitrator to avail them the opportunity to settle the dispute out of court.

In a bid to put this section and other sections relating to Sulh and ADR into effect, institutions have been established in Katsina State to facilitate the course. Among these institutions is the Sulhu-Door which further provides the legal basis and guidance on the conduct of Sulh in Katsina state Sharia courts and ensure the facilitation of Sulh/ADR in the state.

**Jurisdiction of the Sharia Court of Appeal on Sulh**

Jurisdiction can be defined as the power or competence of a court to adjudicate or exercise judicial power over any subject matter, jurisdiction has also been described as the life wire of any case to the extent that a court that lacks jurisdiction and adjudicates, no matter how excellent the adjudication is has

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embarked on a futile exercise.\textsuperscript{25} Therefore it is quite important to examine whether or not the Sharia Courts have the jurisdiction over cases amenable to Sulh.

The Sharia Courts administer Islamic law matters using the primary and secondary sources of Islamic law which are: Quran, Hadith, Qiyaas, Ijmaa’ and also sometimes the tertiary sources will be used such as: Istihsaan, Maslaha Mursalhah, Sadd-d-Daree’ah among others. It can be derived from these sources that Sulh is recommended, some of the textual authorities indicating such have been referenced to above.

Therefore since the practice of Sulh can be traced to the sources of Islamic law which are the judicial instruments of the Sharia Court and it is not inconsistent with the laws of the country especially the Constitution it is correct to conclude that the Sharia Courts have the jurisdiction to administer cases amenable to Sulh.

The types of cases amenable to sulh before the Katsina state sharia courts are normally those that fall within the jurisdiction of the sharia courts in matters involving the application of Islamic law over disputes arising between muslims. These include cases involving divorce, custody of children, marital causes, inheritance, and contract among others.

Regarding matrimonial cases, upon institution of an action before the Sharia Court, the parties are usually given the opportunity to explore avenues for out of court settlement which is a respite period given to the parties to return home to consider the issues at stake with a view of settlement. There upon the court will request for Al-Hakamain (Arbitrators) from the families of the two parties pursuant to the Quranic injunction.

After a matter has been resolved by Sulhu two options are available to the Courts which are whether to confirm the award or resolution reached by the Sulh and adopt same as judgment or to set it aside and hear the case all over, this is provided for in Order 12 Rule 2 of the Sharia Court Civil Procedure Rules which states:

\begin{quote}
On consideration of the report or award of the arbitrator the court may:
\end{quote}

\textsuperscript{25} Muhammad Abacha v. FRN (2014) 9 NWLR (Prt. 1422)
a. Confirm any award of the arbitrator and enter it as judgment of the court; or
b. Set aside the award and fix a date for the hearing of the case by the court and proceed to the hearing of the case accordingly.

The second option will be opted only when Sulh failed.

**Analysis of some Cases where Sulh was invoked in the Sharia Courts**

It is pertinent to review some of the decided cases of the Sharia Court that are illustrative of the principles of Sulh, within the judicial system. There are various cases where Sulh has been applied, three of them shall be considered here.

In the case of **Hadiza Yahaya v. Shu’ailu Marafa**\(^{26}\), the plaintiff complained of deprivation of sexual union and for bad inter-personal relationship by her husband thereby seeking for the dissolution of their marriage. The husband disputed the allegation that it was the wife who was not co-operating with him and the husband requested that the wife should return back all what he had spent on her in the process of contracting the marriage for him to agree to their separation. The court sought for the appointment of Hakamaan for the parties. Following the agreement of the parties i.e. their mutual consent of ending the dispute through Khul’u, the court eventually ordered the separation of the parties by way of Khul’u for the wife to payback the amount of dower settled upon her by her husband.

In the case of **Hamza Aliyu vs Makama Abdullahi**\(^{27}\), the plaintiff and one Alhaji Adamu Idris were neighbours who own adjacent lands and the said Alhaji Adamu Idris sold his plot of land to the defendant. The plaintiff complained that the defendant had encroached upon certain portion of his land by building a fence that extends to almost three feet. When the plaintiff complained to the defendant, he replied that he only builds upon what has been sold to him by the plaintiff’s neighbour Alhaji Adamu Idris. But when Alhaji Adamu Idris was called by the court, it became evident that the defendant stepped into the plaintiff’s land by some three feet. The defendant later pleaded with the plaintiff that he had already spent money by erecting a fence unto the plaintiff’s land, the plaintiff should kindly collect something in place of the three feet encroached by the defendant. The parties therefore reached a sulh that the plaintiff should forgo his right over the piece of land encroached by the defendant and that the defendant should pay to the plaintiff its monetary value. In this type of sulh, it is much more reminiscent of a sale contract and that Sulh as a contract ordinarily have the effect of being a sale contract.

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\(^{26}\) (unreported) case No. 118, complaint No. 10, Sharia Court Kaita, judgement delivered on 7/05/2012
\(^{27}\) (unreported) Case No. 107/122/2012, Sharia court, Kaita, judgement delivered on 16/08/2012
where there is exchange of something in lieu of the right relinquished by the other party.

In the case of **Alhaji Usman Ya’u vs Lawal Musa**\(^\text{28}\), the plaintiff who is a trader was approached by the defendant to grant him 5 bags of fertilizer totalling \#20,000 on credit, the Defendant to settle the amount at the end of farming season. It took on more than two months after agreed period without the defendant appearing to give back the amount of the fertilizers he collected nor did he give information about what happened. The plaintiff’s complain was therefore a demand of the \#20,000 as debt against the defendant. From his own side, the Defendant requested the plaintiff to passionately grant him more time till when the market price of his farm produce has increased for him sell same and settle the plaintiff or that the plaintiff should agree to collect some bags of maize equivalent to the value of his money. The parties finally reached a sulh that the defendant should settle the debt in the next forty days and as a result, the plaintiff thereby agreed to withdraw the case whenever the amount is finally settled. A look in to this case will show that Sulh is advantageous to the two side, while the plaintiff has been relieved of the burden to proof the guilt of the defendant and the stress of going to court repeatedly, the defendant on the other hand has been granted an extension of time within which he can pay the debt.

**RECOMMENDATIONS**

1. It is recommended that Sulhu should be formally recognized as one of the best modes of dispute resolution in the Sharia Courts. This connotes that its practice should be strengthened in states where it is in vogue and be introduced to areas wherein it is not in practice.

2. Workshops, seminars and other educating programmes should be organized for judges, lawyers and other stakeholders that can facilitate the application on Sulhu so as to acquaint and give them reorientation about the essentials and essence of Sulh.

\[^{28}\text{(unreported) Case No. 293/213/2012, Sharia Court Funtua, Judgment delivered on 12/12/2012}\]
3. Judges and lawyers must bring it to the notice of the litigants that they have the option to settle their disputes amicably outside court without any the parties recording a loss.

4. It is recommended that the government at both state and federal level should make provisions more facilities that will aid the practice of Sulh. Such facilities can be the putting in place of an avenue with competent persons where disputants can go to resolve their disputes amicably. These facilities should be available both at the rural and urban parts of the states.

5. That the Judicial council, judicial service commission, the executive, the legislature and all other bodies involved in the appointment of Judges of the Sharia/Area courts should ensure that persons to be appointed to hold such post must be knowledgeable about both litigation and Sulh.

6. Religious leaders are encouraged to educate Muslims especially disputing Muslims of the benefit of amicable resolution (sulh) and discourage them from delving into litigation immediately they have any conflict.

Conclusion

Efforts and contributions of some persons are required for the positive achievement of an amicable settlement of disputes. Such persons may include Sharia Court judges, lawyers, religious leaders, traditional rulers, litigants and even the Islamic communities at large.

1. Sharia courts: The role of the sharia courts in facilitating the practicability of Sulh is large in scope, this is because a cursory look at the concept of Sulh in Islamic law reveals that Sulh as the preferred mechanism for dispute resolution between litigants is beyond out of court because the Qadi himself is capable of encouraging and enabling sulh, this can be done by performing the roles of mediators and conciliators as part of their judicial responsibility. Writings of muslims jurists have continuously bother on ‘Qadaa’ bi s Sulh’ (adjudication by way of sulh) as one of the alternatives available to a judge.
when cases are brought before him. Therefore the term Qadaa’ (adjudication) does not exclusively imply adjudication based on the strict rights of the parties in accordance with the law, but termination and resolution of the conflict at hand in any manner lawful in Islam within the judicial system.

The practice of biko is a common example in most northern states sharia courts whereby cases are adjourned at the instance of the husband with a view to exploring out-of-court settlement of the dispute. If they succeed in doing so, that brings an end to the matter, otherwise there will be a full-blown trial wherein the erring party would be warned and disciplined accordingly.

2. Lawyers: Lawyers are referred as ministers in the temple of justice, and they have a prominent role in the processes of sulh, since they are the closest to their clients. Lawyers have the role of encouraging their clients on trying amicable settlement outside court before going for litigation; this can be done by putting confidence in the minds of the clients and allowing them to know the great benefits in sulh. In fact sometimes may serve as the third party that will represent the arbitrator or mediator between the parties and by that help to draft the terms of settlement that may or has been agreed upon.

3. Religious leaders: can aid this cause by sermonizing disputants with textual authorities suggesting the propriety of Sulh. Also the quest for loyalty and the reputation of religious leaders and traditional rulers help in drawing litigants closer to the negotiation table to discuss their problems and eventually reach a settlement.

Other reputable citizens can also be included to serve advisory roles. The relevance of the roles of the other aforementioned persons can also not be over-emphasised as they must all be ready to encourage and be part of the amicable settlement.