

JUDGMENT WRITING AND EXECUTION OF JUDGMENT IN SHARIAH COURTS OF YOBE STATE, NIGERIA

Muhammad Bashir Alkali
Sub-Dean, Faculty of Law,
Yobe State University Damaturu, Nigeria.
mbashiralkali@gmail.com

ABSTRACT

The court pronounces a verdict at the end of litigation, the final pronouncement which ends the matter before the court is the judgment of the Shariah. The position of the judge is so important that the Shariah prescribes strict criteria for a person to be qualified for appointment as a judge. The judge must ensure that he fears Allah and acts based on recognized and accepted procedures. Where a judge ignorantly passes judgement or refuses to be just, the anger of Allah awaits him. However, when he acts justly and in accordance with accepted principles, he gets reward for that. This paper adopts a doctrinal methodology in examining the rules of Shariah in writing and execution of judgement. The research finds that most judges require training on the proper ways of writing judgement and executing same. It therefore suggests for training and retraining of not only judges but all staff of the court in Yobe state of Nigeria on the roles they are expected to play in the writing and execution of judgment of the court.

Keywords: judgement, execution, writing, courts

INTRODUCTION

Shariah advocates for establishment of a just society where every individual no matter his stand in the society is given just treatment before the court of law. The bedrock of every just society is an independent judiciary where qualified judges adjudicate on matters before them and administer judgment in accordance with the principles of the Shariah and execute same. Allah the

most High is in full picture of every thought, action or in action of his servants (al-Hilal, M.T. & Khan, M.M., 1982).¹ Despite this when Prophet Adam (A.S.) ate from the tree he was asked not to approach, Allah SWT asked him why he did that before passing judgment on him.² Similarly, when Allah commanded Angels to prostrate in reverence to Adam (A.S.), Iblis refused, Allah did not pass judgment on him until he asked him why he refused obeying the instruction given before judgment followed.³ This therefore adds weight to the proposition that under the Shariah judgment requires certain rules that must be adhered to and the judge must give the parties fair hearing at all times. The personal knowledge of the judge should not be the basis of his judgment even where he knows very well about the facts surrounding the case (Muhammad Yūsuf al-Kāfī, 2000: 16).⁴ When parties make claims and establish their rights through witnesses or oath, at this stage a judge is expected to pass his judgment between the parties and is not allowed to make *ṣulh* between them except where he is not too clear with the nature of the case or pronouncement of judgment can lead to mischief or enmity between relatives (Abbas Abdullahi Machika, 2020: 16).

After a judgment has been delivered, the successful party is entitled to enjoy the fruit of his success. It is therefore exceedingly important to state that Shariah does not allow denial of a party his right to the enjoyment of the fruit of his success. Machineries must therefore be in place to allow smooth execution of judgments delivered by courts of competent jurisdiction. Technicalities will not be allowed to serve as stumbling block towards the execution of validly delivered judgments. This however does not mean a denial of the right of parties to appeal. It is a fact that parties deliberately appeal against court decisions and file frivolous motions to stay execution of judgments. This paper will therefore examine the meaning and types of judgments. Qualities of good judgment and writing of judgment before the Shariah courts will equally be examined. Execution of judgments and stay of execution will also be examined.

A doctrinal methodology was adopted in this baby where library-based material was utilized. Both secondary and primary data were used. The

¹ Surah al-Baqarah 2:284 “...whether you disclose what is in your own selves or conceal it. Allah will call you to account for it...” see also Surah al-Mulk 67: 13 and Surah al-Mujadalah, 58: 7

² Surah Baqarah 2: 35

³ Surah al-A'raf 7: 12

⁴ The only exception is where it relates to knowledge about the character of a witness.

glorious Qur'an, *ahādīth* and books on fiqh were utilized. Content analysis and descriptive analytical method was used in the analysis of issues.

MEANING OF JUDGMENT

The Arabic word for judgment is *al-qaḍā'* (Rajāb Muḥammad Bukhayt, 2021). Al-Zuhri opined that *qaḍā'* literally means cutting. Just the way a judge through his pronouncement makes changes such as cutting (*Ibid.*). It was equally given two meanings firstly it is the *siffa* (feature) of the person that makes judgment between people. Secondly it stands for the name of decision made between people for example saying that the judge has judged between people (*Ibid.*).

Jurisprudential, judgment stands for decision made by a court of competent jurisdiction between litigants. It does not matter whether the decision is just or unjust and whether the judge has complied with the requirements of the law in passing judgment between parties ('Īsā Ibn 'Uthmān Ibn 'Īsā al-Ghazzī, 2012).⁵ It has equally been defined to mean a judgment of a Court (*Ibid.*).

The glorious Qur'an used the word *qada'* (judgment) to mean other things thus:

- a) *Hukum*: The word *hukm* which also means decision or judgment was used. The Qur'an states:

*"But no by your lord they have no faith until they make you (o Muhammad (PBUH)) judge in all disputes between them, and find in themselves no resistance against your decisions, and accept them in full submission."*⁶

- b) *al-Hatam* and *al-Luzum*: These words stand for decree and decision. The Quran used *Qadaina* (decreed). It states thus "Then when we decreed death for him (Suliman AS) nothing informed them (Jinn) of his death except a little worm of the earth..."
- c) *al-Amr*: the word *amr* literally means decreed/order. The Qur'an used the word *Qada* (judged) to mean Decreed thus: "And your Lord has Decreed that you worship none but Him..."⁷
- d) *al-Inhaa'u* and *al-iblaghu*: These two words equally refer to decree and the word *Qadau* was used by the Qur'an thus: "And we Decreed to the children

⁵ Sharia Court Civil Procedure Rules, 2012 CAP 119 Laws of Yobe state Order 1 Rule 2.

⁶ Surah Nisa', 4: 65

⁷ Surah Isra', 17: 23

of Israel in the scripture: Indeed, you will do mischief in the land twice and you will become tyrant and extremely arrogant.”⁸

- e) *al-Bayan*: The word *yuqda* (judgment) was used to take the form of *bayan* meaning complete explanation. The Qur’an states “Then High above all be Allah, the true king. And be not in haste (o Muhammad (PBUH)) with the Qur’an before its revelation is completed to you, and say ‘My Lord increase me in knowledge’”⁹
- f) *al-Khalq, san’u, and al-Taqdir*: The Qur’an used the word *Qada* (Judgment) for creation thus: “Then He completed and finished their creation (as) Seven heavens in two days, and He made in each heaven its affair”¹⁰
- g) *al-Firaghu*: *al-Firaghu* literally means finish and accomplishment. The Qur’an used thus: “Thus is the case judged concerning which you both did inquire”¹¹
- h) *al-Amal*: this means ruling or decree. The Qur’an states “...So Decree whatever you desire to Decree, for you can only Decree (regarding) this life of the world”¹²
- i) *al-Qatl and al-Halaq*: This means killing or destruction. The Qur’an used *qadau* for this sense thus: “... so Musa struck him with his fist and killed him...”¹³
- j) *Bulugh al-Nayl*: This means accomplishment of desire. The Qur’an used *qada* in this sense thus “So, when Zaid had accomplished his desire from her (i.e., divorced wife), We gave her to you in marriage”¹⁴

In the Nigerian context, the judiciary is the arm of government that is bestowed with the powers of making decisions between people.¹⁵ The courts in Nigeria are divided into courts of record and courts other than courts of

⁸ Surah Isra’, 17: 3

⁹ Surah Taha, 20: 114

¹⁰ Surah Fussilat, 41: 12

¹¹ Surah Yusuf, 12: 41

¹² Surah Taha, 20: 73

¹³ See also Surah Yunus, 71 to mean *Mada* pass, Surah Maryam, 35 *irada* meaning intend, Surah *Qasas*, 44 to mean *al-‘Ahad* promise.

¹⁴ Surah Ahzab provided for that.

¹⁵ Constitution FRN 1999 (As Amended) Section 6.

record.¹⁶ The Shariah Court of Appeal and the Shariah courts are two examples of courts that make decisions according to Islamic principles at both levels.

HISTORICAL EVOLUTION OF JUDGMENT IN SHARIAH

After the migration of the Prophet (PBUH) from Mecca to Madina. The first Islamic state was established in Yathrib (Madinah) and the Prophet (PBUH) was both the head of the executive and judiciary. Though the Jews lived alongside the Muslims in Madinah, the Muslims never compelled them to come before the prophet (PBUH) for decisions (al-Hilal, M.T. & Khan, M.M., 1982: 1).¹⁷ However, for a Muslim, it was obligatory to choose the Shariah as the law and the court of the Prophet as the place of settlement of legal dispute. It was a sign of hypocrisy for any Muslim to choose to be judged by others and not the Shariah/Prophet PBUH (al-Hilal, M.T. & Khan, M.M., 1982: 1).¹⁸ As the territories of the Muslims expand, the prophet (PBUH) appointed Ali (RA) and Muazu bin Jabal to Yemen as judges and asked them with what they will use in judgment? They said the Qur'an and the prophet said what if the Qur'an is silent about it they said *ḥadīth* and he said what if the *ḥadīth* is silent about it they said they will use their personal reasoning, the prophet was so happy and impressed.¹⁹

After the death of the Prophet (PBUH) the *khulafa al-rāshidīn* (rightly guided companions) were on the strong foundation laid by the Prophet (PBUH). Umar was appointed a judge during the time of Abubakar (RA) but for the two years of his appointment no matter came before him due to his strictness (*Ibid.*). Umar had contributed immensely to the growth of the judiciary. He established courts in different parts of the Islamic state (*dawlah*). He provided

¹⁶ The courts of record are those established by the Constitution for example the Supreme court, Court of Appeal, Federal High Court, High Court, Shariah Court of Appeal and Customary Court of Appeal. The courts other than courts of record include the Shariah Courts, magistrate's courts, and customary courts.

¹⁷ Surah Ma'idah 5:42, They eagerly listen to lies and greedily profit from all that is evil. If they come to you [Prophet] for judgment, you can either judge between them or decline, for if you decline, they cannot harm you in any way. If you do judge, judge them fairly: God loves the just.

¹⁸ Surah Ma'idah 5:47, So let the people of the Gospel judge by what Allah has revealed in it. And those who do not judge by what Allah has revealed are 'truly' the rebellious.

¹⁹ Abī Dāwūd, Sulayman Ibn al-Ash'ath al-Sijistānī al-'Azdī, *Sunan Abī Dāwūd, ḥadīth* no. 3592.

a Code in his popular letter to Abu Musa al-Ashary. He provided for prisons and made significant improvements due growth in the population and territory.

Usman bin Affan (RA) provided courts but initially it was the Mosque that was used as courts. He affirmed the use of these four sources in decisions by judges thus Qur'an, traditions of the Prophet (PBUH), Consensus opinion of scholars and *qiyās* (Rajāb Muḥammad Bukhayt, 2021: 31).

Progress continued up to the time of *Ummawiyya* when writing of judgments and keeping of records started. During the time of the Prophet (PBUH) and 4 companions, judgments were not written. The growth of the Islamic state was probably the reason for writing of judgments. The Abbasiy Dynasty established the office of *Qadi Quda* (Grand Qadi) for entertaining appeals. A student of Abu Hanifa called Abu Yusuf was the first to be appointed into that office. He has powers of supervision, removal, review etc of their decisions (*Ibid.*). Subsequently, decisions became based on *madhahib* in Iraq it was *al-Hanafy* that was observed, in Sham (Syria) and *Maghrib* (Algeria) it was Malikiyyah and in Egypt it was Shafiiyah (*Ibid.*).

IMPORTANCE OF JUST JUDGMENT

It is essential for judgment to be just to achieve the essence of judgment. Justice must be the major objective of every judge. Judgments should be just to have a just society. Parties and witnesses must assist the judge in arriving at just decisions. Lawyers must not mislead the court into unjust decisions. Therefore, it is a collective responsibility for all persons involved in cases to ensure that they do not take part in actions that can lead to unjust judgment. Nowadays, even non-judicial staff of the court can connive either through serving as agents in bribery and corruption or even misleading judges. The Qur'an states:

*“O you who believe stand out firmly for justice as witnesses to God whether against yourselves, or your parents, or relative, whether against the rich or poor. Allah is a better protector to both (than you) so follow not the lust of your hearts, lest you avoid justice; and if you distort your witness or refuse to give it, verily, Allah is ever well-Acquainted with what you do.”*²⁰

The Qur'an states further:

²⁰ Surah Nisa', 4: 135

*“O you who believe stand out firmly for Allah as witnesses to justice. Let not the hatred of others make you avoid justice. Be Just that is nearer to piety, And fear Allah. Verily Allah is well acquainted with what you do.”*²¹

The traditions of the Prophet (PBUH) have clearly shown how the prophet judged between people justly and ordered that judge must be just in all their decision. The Prophet (PBUH) stated that a judge that exerts efforts and arrives at a just decision has two rewards and a judge that exerts effort and arrives at a wrong decision has one reward.²²

Just decisions lead to a calm and peaceful society. Where injustice reigns, people will resort to self help and in the end, it will lead to jungle justice and anarchy. It is therefore in the interest of the society to have just decisions and indeed have court judgments executed.

QUALITIES OF GOOD JUDGMENT

A good judgment is one delivered by a competent judge in accordance with established rules of the Shariah. This definition therefore requires two important things thus:

1. Qualified Judge

This requirement is sacrosanct. A judge must be qualified before his judgment can be valid. Buraydah ibn al-Hasib narrates: The Prophet (peace_be_upon_him) said: Judges are of three types, one of whom will go to Paradise and two to Hell. The one who will go to Paradise is a man who knows what is right and gives judgment accordingly; but a man who knows what is right and acts tyrannically in his judgment will go to Hell; and a man who gives judgment for people when he is ignorant will go to Hell.²³ AbuHurayrah: The Prophet (peace_be_upon_him) said: He who has been appointed a judge has been killed without a knife.²⁴ Despite the challenges, it will equally be a source

²¹ Surah Ma'idah, 5: 8

²² *Ḥadīth* by Muslim, al-Bukhārī, Abī 'Abd Allāh Muḥammad Ibn Ismā'il al-Ju'fī, *Ṣaḥīḥ al-Bukhārī*.

²³ Abī Dāwūd, Sulayman Ibn al-Ash'ath al-Sijistānī al-'Azdī, *Sunan Abī Dāwūd*, 3566

²⁴ Muslim, Abī al-Ḥusayn Muslim Ibn al-Ḥajjāj Ibn al-Qushayrī al-Naysabūrī, *Ṣaḥīḥ Muslim*, *ḥadīth* no. 1716.

of obtaining the pleasure of Allah and paradise for the judge that fears Allah in his decision and has the qualities of a good judge. The prophet (PBUH) said When a judge gives a decision, having tried his best to decide correctly and is right, there are two rewards for him; and if he gave a judgment after having tried his best (to arrive at a correct decision) but erred, there is one reward for him (Abbas Abdullahi Machika, 2020: 6).

The qualities required of a judge are divided into. There are those qualities that must be realized otherwise all his judgments will be declared void and the second category are recommended and not obligatory (*Ibid.*). The obligatory qualities are

- a) Islam: Only a Muslim is qualified to hold the office of a judge under the Shariah. This is because he adjudicates based on the principles of the Shariah hence the need for him to believe in all the five pillars of Islam without reservation.²⁵
- b) Freedom and not a slave: A judge is required to be a free man and not a slave. Due to the absence of freedom, independence cannot be achieved, and a judge is expected to be independent so that he can deliver his judgments without fear or favour (Abū Zayd al-Qayrawanī, 2003).²⁶
- c) Maturity: A child is not qualified to be a judge. This is because due to his immaturity he does not have the capacity of appreciating issues and hence cannot make a just decision. The age of maturity under the Shariah is attained either by wet dream, growth of pubic hair, pregnancy or menstruation or attainment of the age of 18 years under the popular Maliki view.
- d) Just and upright: A judge must be upright and just. A person who is unrighteous, corrupt, and unjust is not qualified to hold the office of a judge. It is therefore necessary to make investigation about the character of people and their relationship with others before appointment as judges. Similar investigation can be carried out before promotions in case of change in attitude after appointment as some people do change due to change in status and conditions (Ibrāhīm ‘Abd Sa‘ūd al-Janabī, 2013: 309).

²⁵ The pillars of Islam are five thus: Belief in the oneness of Allah and Muhammad (PBUH) as his messenger, five daily prayers, alms giving, fasting the month of Ramadan and pilgrimage to Mecca. See Annawawy, Arbauna *ḥadīth*.

²⁶ It is important to mention that Islam met the institution of slavery already established across the globe and restricted ways of enslaving people and opened several gets of freeing slaves. For example, in cases of zihar divorce, accidental homicide and intentional breaking of fast, freeing a slave is one of the punishments prescribed.

- e) Male: Under the Maliki school, only a male is qualified to be appointed as a judge (Abbas Abdullahi Machika, 2020: 6). Other scholars like Abu Hanifa stated that a woman can be a judge in all cases where a woman can give testimony. Imam Al-Tabary opined for unrestricted powers to appoint a woman as a judge or head of state.
- f) This does not mean Islam looks down on the status of women. Islam has placed women on the same footing with men in terms of rights and responsibilities. The differences are insignificant and are aimed at addressing their peculiarities. The Qur'an states Whoever does good, whether male or female, and is a believer, We will surely bless them with a good life, and We will certainly reward them according to the best of their deeds.²⁷ The Qur'an states further that "And due to the wives is similar to what is expected of them, according to what is reasonable. But the men have a degree over them [in responsibility and authority]. And Allah is Exalted in Might and Wise." (*Ibid.*)
- g) Hearing, seeing, and talking. A judge must be able to see things well in order to appreciate their nature. He should equally be able to hear and talk. Without these three important senses, a just judgment cannot be made. In fact, even where these disabilities befall a judge after his appointment, it is necessary for him to resign.²⁸

The second category of requirements are not obligatory and will not vitiate his decisions but are very important thus:

- a) Intelligent: intelligence is a vehicle that will assist a judge to make sound conclusion and appreciate issues before him. A judge should have a better understanding of issues because that helps in arriving at a just decision.
- b) Deep knowledge of the Shariah: Without good knowledge of the Shariah, a judge should be able to know the sources of the Shariah and arrive at a just decision based on the authorities.
- c) Firmness and caution: A judge should be firm and decisive in his actions. Where he makes a ruling, he should be firm to ensure that his decisions are enforced.
- d) Knowledge of *ḥadīth* and *fiqh*: These are to important tools that are directly linked to decision making. A judge should have good knowledge of *ḥadīth* and *fiqh*.²⁹

²⁷ Surah Baqarah, 2: 228.

²⁸ Muslim, Abī al-Ḥusayn Muslim Ibn al-Ḥajjāj Ibn al-Qushayrī al-Naysabūrī, *Ṣaḥīḥ Muslim*, no. 4244.

²⁹ Abī Dāwūd, Sulayman Ibn al-Ash'ath al-Sijistānī al-'Azdi, *Sunan Abī Dāwūd*, no. *ḥadīth* 3582.

2. Rules of Shariah

A valid judgment under the Shariah must satisfy the requirements of the Shariah. The Prophet (PBUH) has clearly mentioned in his *ḥadīth* that it is for the claimant to call witnesses and where the claimant has no witnesses then the defendant takes the oath of denial (Ibrāhim ‘Abd Sa‘ūd al-Janabī, 2013). In another *ḥadīth* the Prophet (PBUH) states that “You must not judge between people until you hear both of them” (Abbas Abdullahi Machika, 2020).

In civil actions, when parties appear before the court, the judge is expected to identify the claimant and that is the first assignment on the judge. Under the Shariah the first person to lay the complaint is not necessarily the claimant. The nature of the case determines the claimant before the Shariah court. The complainant is always the person whose statement runs counter to the original state of affairs or custom supports his position. Whereas the defendant is the party whose position is reinforced by custom and the original state of affairs bears witness thereto.

The Shariah Court Civil Procedure Rules, 2012 CAP 119 Laws of Yobe state demands that in a civil case where both parties are in the court, the clerk of the court or judge is to read or explain the meaning of the claim against defendant and after that he shall be required to reply.³⁰

The claim must be well stated, genuine and proved before the claimant can succeed. Where the subject matter is unlawful e.g. alcohol then there is no claim before the court. The claim must be clear and not vague. The claimant must be able to state what he wants and how the defendant is connected to it. The judge must not be carried away by the piety of the claimant. The claimant must establish his claim before the judge by adducing evidence. Two male witnesses or a male witness and two female witnesses can suffice.³¹ In land cases both parties are claimants and as such will adduce evidence to establish their claims.

In both criminal and civil cases, confession/admission are the strongest means of proof, it is more reliable than witnesses (*Ibid.*). In criminal cases, generally two male witnesses are required to proof a case (‘Abd al-Qadir ‘Audah, 1987). While in cases of accusation adultery four male witnesses must testify as having witnessed the actual act taking place.³² However where the case relates to accusation of adultery, then the husband can resort to *li‘an*

³⁰ Sharia Court Civil Procedure Rules, 2012 CAP 119 Laws of Yobe state. Order 10.

³¹ Surah Baqarah, 2: 282.

³² Surah Nur, 6-9.

(mutual imprecation). When the husband subscribes to the oath and the wife fails to take the oath of denial, that can be a proof of *zina* on her.³³ Similarly, pregnancy of a woman that is unmarried and there is not defence of rape is also a proof of *zina* (Yahya Yunusa Bambale, 2003: 29). Generally, *hadd* punishment must be avoided in cases of doubt (‘Abd al-Raḥmān Ibn Naṣīr al-Sadī, 2012: 13).

I’izar is similar to allocutus in criminal cases. It is the last excuse a judge is expected to take from the parties in both criminal and civil cases. After evidence are taken and before judgment is delivered the judge is expected to ask the parties if they have anything else to say. No matter how good the trial is, so long as *i’izar* is not made, the judgment will be a nullity and will be set aside. The judge is expected put the *i’izar* and the reply by the parties in writing and in the presence of at least two witnesses (Abbas Abdullahi Machika, 2020: 32). The Shariah Court Civil Procedure Rules, 2012 CAP 119 Laws of Yobe state demands that *i’izar* must be administered even after a defendant has admitted a claim.³⁴

JUDGMENT WRITING

A judgment must be clear and unambiguous. Judgment writing has been described to be an art by some and some said it is both a science and an art (Moses A. Bello, 2016: 1). Justice Udo Udoma stated that there are two styles of writing judgment:

- a) Smooth or narrative style: This style involves the assimilation of facts of a case and the narration of the account as an eyewitness reporting an event and setting out the real issues in controversy requiring determination between the parties
- b) Straccato style: In this style, the argument conversed by the parties is reproduced by way of summary and the judge ends in believing or not believing one side of the parties (Abdullahi Maikano Usman, 2016: 15).

With respect to its types, judgments are classified into summary and reserved judgments. A summary judgment is delivered instantly upon conclusion of hearing, sometimes without giving reason for the judgment. While reserved is delivered subsequently after analysis of the issue (*Ibid.*).

³³ Surah Nur, 24: 6-9.

³⁴ Order 11 Rule 4.

A judgment can also be interlocutory or final. Interlocutory judgment merely directs further action or step to be taken. Whereas a judgment that is complete unto itself and, after hearing of parties is a final judgment and ready for execution (*Ibid.*). In *Gbigbadua v Ibrahim*³⁵ the court states that after judgment there is no room for *ṣulḥ* and judgment takes effect after pronouncement. A judge is not expected to make judgment when issues are not clear.³⁶ Judgment on landed property are expected to be delivered in the place where the land is situated (Abbas Abdullahi Machika, 2020: 6).

Shariah does not prevent us from making rules for regulating actions and procedures for easy and smooth administration like judgment writing.³⁷ Clearly, part of the requirement of being a judge is the ability to see and hear. A person without sight cannot ordinarily write. The Constitution of the Federal Republic of Nigeria 1999 requires that:

*“Every court established under this constitution shall deliver its decision in writing not later than 90 days after the conclusion of evidence and final addresses and furnish all the parties to the cause or matter with duly authenticated copies of the decision within seven days of delivery thereof.”*³⁸

The Shariah Court Civil Procedure Rules, 2012 CAP 119 Laws of Yobe state demands that judgment shall be in writing. It states thus

*“The order of a court shall be pronounced by the Alkali in court and shall be written in precise term in civil record book by the Alkali and sign by him.”*³⁹

Five major requirements are stated by this important rule which are thus:

- a) Writing: the rule requires judgment to be written and this means there is no way a judgment can be valid if it is orally pronounced. Words shall be used and in legislative drafting shall generally means obligatory failure to comply shall lead to setting aside a decision.
- b) Precise: Similarly, the rule requires that judgment to be precise meaning it should not be too length and out of point. Judgment is not like a novel where a writer includes imaginations and thoughts. Neither should it be like an academic paper where the writer can make deep analysis of issues and even

³⁵ *Gbigbadua v. Ibrahim* (2013) 1 SQLR 4, 134, 136.

³⁶ *Gumel v. Natambu* (2014) 2 SQLR 3, 357.

³⁷ This is referred to as QANUU WA daiyyah.

³⁸ Section 294(1) 1999 Constitution (as amended).

³⁹ Order 14 Rule 1.

make speculations. A judgment should rather be direct and unambiguous. Where a court judgment is not clear, it leads to confusion and crisis.

- c) Civil book: The content of the judgment must be written in the official civil book provided by the judiciary for that purpose. A judge must not have a separate book where he selects certain cases at will to write his judgment or even on a piece of paper with the intention of transferring it to the record book later.
- d) In the court: The rule requires judgment to be delivered in the court and the judge cannot deliver judgment in his house or other places he wants.
- e) Signature. A judge is expected to sign his judgment before it becomes complete.

Certain important questions can arise as a result of these requirements. They are:

- a) Can rubber stamps and electronic stamping satisfy this requirement of the law?
- b) Nowadays, with the advancement in technology judges type their judgments and only print same. Can this satisfy this requirement?
- c) The Covid-19 Pandemic has resulted in the use of online trials and delivery of judgments online where judges read their judgments from their computer screens and in their houses. Can this meet the requirement of the rule?

Islamic law readily accepts good things that help in the course of justice like the online judgments due to the covid-19 pandemic, it will therefore be suggested that the rules should be amended to accommodate these new realities and even those that may come in the future

The essence of these requirements is to ensure that the judgments are genuine and acts that can satisfy these requirements should be accepted. However, the language of the rules should be amended to avoid unnecessary appeals due to technicalities or alternatively the interpretation section should accommodate that.

Under the Shariah principles, a judgment is expected to be in writing and parties are as a matter of right entitled to a copy of the judgment if they desire (Abbas Abdullahi Machika, 2020: 68).

There is generally no defined and a strict rule on how judgments shall be written in view of the fact that neither the Prophet (PBUH) nor the four rightly guided companions wrote judgment. However, the content of judgment is supposed to carry three major features thus:

- a) Information about the court: A judgment should carry information relating to the name of the court which includes the territory where the court is situated.⁴⁰ Name of the judge, signature of the judge,⁴¹ stamp⁴² and the date of judgment (Abdullahi Maikano Usman, 2016: 8).
- b) Court proceedings: The judge is expected to state the name of the parties, the claim and defense if any. The judge is expected to reflect the evidence adduced and the *izar* (last warning) taken before delivery of judgment (*Ibid.*). These points are very important because they assist in giving a good picture of what transferred before the court and that helps in arriving at a sound judgment.
- c) Verdict: The most important aspect of the judgment is the final verdict stating whether the accused is guilty or not. It equally mentions the sentence and the reason/authority for that.⁴³ In civil suites, the judge is expected to analyze the issues before the court and make decision based on facts and evidence before him and not his opinion. A judge should be able to tie the submission of counsel/evidence before him and the issue at hand. In the case of *Usman v Kusfa* he supreme insisted that a judge must not make pronouncement on an issue not raised before him.⁴⁴

Abdul Nasir Abdul Basal opined that requires certain terminologies can be used in judgment thus:

“Court decisions, verdicts, or pronouncements do not end in “I rule, decide etc, rather, it extends to expressions such as “I hereby decide or rule; I impose or I order; I transfer the title of this property to so and so or I award it to him”, I a null this marriage or sale; I confirm or it is established before me that this property belongs to so so and so” (Abdullahi Maikano Usman, 2016).

⁴⁰ For example Upper Sharia Court I, Damaturu, Yobe State.

⁴¹ For example Alkali Muhammad Nur.

⁴² Stamp is not alien to Shariah as the Prophet (PBUH) used the inscription on his ring ‘*Muhammad Rasulullah*’ as his stamp.

⁴³ For example in the case of adultery the judge should be able to state that the sentence is based on the provisions of Surah Nur 24:1 which states that “the adulterer and the adulteress flog each of them with hundred lashes...”

⁴⁴ *Usman v. Kusfa* (2013) 1 SQLR 2, 1.

EXECUTION OF JUDGMENT

Execution of judgment is known as *Tanfeez El-hukum*. It involves ‘carrying out by means of enforcement one right against the other or taking away something from one and putting it into the hand of another’ (Adamu Abubakar, 2017). Judgment can be executed by the judge who delivered the judgment or by another judge stranger who might not be within the jurisdiction of the trial judge but is approached with a request to execute it via a letter from the trial judge (*Ibid.*). The essence of judgment will be defeated if there are no execution of judgment. Khalifa Umar ibn Khattab in his letter to Abu Musa Al-Ash’ariy said “decisions that are not enforceable are invalid” (Abdullahi Maikano Usman, 2016). The Prophet (PBUH) pronounces judgment and declares its immediate execution. When Maiz confessed against himself four times that he has committed adultery and upon confirmation that he is of sound mind, the prophet (PBUH) ordered that the judgment be executed which was carried out by his companions (‘Abd al-Qadir ‘Audah, 1987). The prophet (PBUH) sometimes delays execution of judgment to protect other interest. Meaning that, it is not in all cases that the judge should jump immediately into execution of his judgment. When a woman confessed to the prophet (PBUH) that the pregnancy she was carrying was as a result of adultery, he was not quick in passing judgment and its execution, he rather asked her to go and deliver. When she delivered and returned to him, asked her to go and breast feed the child until the child is weaned. Not until she came with the baby after weaning the child with a date in his hand as sign to proof, he can now eat that the prophet (PBUH) executed the judgment.

The Yobe law requires time to be mentioned for the execution of the judgment thus;

*“A court when making an order may fix a time for compliance therewith and in particular may direct that any sum of money ordered to be paid may be paid by installments.”*⁴⁵

This is a good rule to avoid situations where judgments are only delivered without time or hope for their enforcement. Similarly, the court does not need to inform him of the terms of the order or judgment if he was in the court during the pronouncement.⁴⁶ However, if he is not in the court during the pronouncement, he should be formally written and be informed of the terms. The rule states:

⁴⁵ Order 14 Rule 2.

⁴⁶ Order 14 Rule 3.

When the party affected by an order of a court has not appeared in the proceedings the terms of such order shall be brought to his notice by the service upon him of a formal written order.⁴⁷ Where the decision of the court relates to an injunction and defendant willfully and deliberately refuses to comply with such injunction, the Yobe rules declares:

“Any person who for a period of fourteen days makes default in complying with an injunction made under rule1 other than an order for the payment of money, may upon proof of such default be ordered by the court to:

(a) Pay into court a sum not exceeding N100 for each day during which such default is made: or

(b) Be detained for a period not exceeding 30 days.

*Any sum ordered to be paid under the provisions of this order shall be recoverable as a civil debt.”*⁴⁸

Under the Yobe state Rules, a person seeking the execution of judgment should write to the court seeking such execution. Normally it should come after 14 days of the pronouncement by the court.⁴⁹ Normally execution expires after two years of order, but the court can on its own (*sua moto*) make execution even after two years. Where a person is dead, the execution shall be against his estate.⁵⁰

Stay of execution is a very important aspect of judgment. A court has a discretionary power to stay the execution of a judgment, but that power must be exercised judiciously and judicially. Stay of execution is known as *tauqif*. Under the Shariah it is used to stop execution of judgment or arrest a subject matter before a judgment (Adamu Abubakar, 2017). In a judgment involving money, the terms upon which the court would grant a stay of execution are easier to determine than in other judgment where the subject matter(*res*) is perishable or prone to destruction. The terms include effect on applicant’s financial position, difficulty to secure refund etc (*Ibid.*). *Gbigbadua v Ibrahim*⁵¹ the court held that the stay of execution must be based on cogent and convincing reasons.

⁴⁷ Order 14 Rule 4.

⁴⁸ Order 15 Rules 2 and 3.

⁴⁹ Order 17 Rules 1 and 2.

⁵⁰ Order 17 Rules 3 and 4.

⁵¹ *Gbigbadua v. Ibrahim* (2013) 1 SQLR 4, 134, 136.

CONCLUSION

The history of judgment under Islamic law can be traced back to the time of the Prophet (PBUH) where he served as the judge and used his mosque as court. The companions of the prophet followed the foot path of the prophet and judged between believers justly. Islamic law has made an elaborate provision on judgment and its execution. The judge must be unbiased and have the fear of Allah in his decisions. Judges are enjoined to deal between litigants equally without discrimination between the rich and the poor. Neither should there be discrimination between a relative and a non-relative. A judge must not use his personal knowledge in arriving at a decision but should rather rely on the testimony of witnesses and other evidence before him.

The plaintiff in a civil case is expected to prove his case by calling witnesses and where he does not have witnesses then the defendant shall take oath. In criminal cases, punishment must be avoided in cases of doubt and the proof must be by reliable male witnesses. Writing judgment started after the death of the prophet during the *Umuwiyyah* dynasty and is well received by the Muslim world. A judge should analyze the facts before him and provide authorities for his decision. There is however no established standard or generally accepted format of how a judgment should appear. The judge must ensure that his judgment is clear and unequivocal. It should carry the address of the court, his name, date, stamp, and signature. It should equally reflect the evidence presented before him and his verdict. The verdict should be in the form of “I hereby order” etc.

The execution of judgment is expected from the court that pronounced the judgment and a judgment that cannot be executed is an invalid judgment. Stay of execution can only be granted when there is the need to do that otherwise a successful litigant must be allowed to enjoy the fruit of his success.

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